

July 18, 2006



TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin

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1 Council President Leventhal,
2 Good morning everyone. Is Reverend Winnette here? Hi, welcome, glad you're here.
3 We have an invocation by the Reverend Scott Winnette of the Bradley Hills
4 Presbyterian Church in Bethesda.

5
6 Reverend Scott Winnette,
7 Let us pray. Spirit of God, we give you thanks for the many blessings in our lives. Thank
8 you for the blessings of bodies and a material world of earth, water and sky. Thank you
9 for the blessings of mind, our abilities to create community. Thank you for the blessings
10 of spirit, our powers of relationship. God, bless this Council with wisdom and
11 understanding as they seek to share the blessings of body, mind and spirit for the good
12 of Montgomery County's people, land and creatures. And bless us all as we seek to
13 return this world to goodness. We especially pray for the war-torn Middle East and for
14 those suffering from tsunami in Indonesia. Amen.

15
16 Council President Leventhal,
17 Amen. Thank you Reverend Winnette. We have the presentation by Councilmember
18 Praisner.

19
20 Councilmember Praisner,
21 Thank you. I was just thinking this morning when, come around, I was just thinking this
22 morning as I was coming into the office about my own childhood growing up in New
23 Jersey, and the treat and wonderful time I used to have with my father visiting the
24 historic areas. Mostly associated with the Revolutionary War and Pre-Revolutionary
25 War. I don't know how many times I went to the Day Mansion in Morristown with my dad
26 and with others, but it always gave me a great sense of pride and it also gave me such
27 joy. And I was thinking that I'm going to have to challenge my husband, who has lived in
28 Montgomery County since 1946 to have him identify the Heritage Tourism areas and
29 the parks within Montgomery County. But I won't give him this wonderful resource until I
30 see how well he's done with that. With that I think I'm going to turn this over to Peggy
31 Erickson, first. And we'll have a little conversation about the parks and Heritage Tourism
32 and this wonderful document that is now available for the residents of Montgomery
33 County. Peggy?

34
35 Peggy Erickson,
36 Thank you. This was a wonderful marriage between Park and Planning and the
37 Heritage Tourism Alliance. We have published a 100,000 free maps for County
38 residents. And when I've shared this with the state folks, they're just very impressed.
39 We have bike trails. We have hiking trails. We have heritage sites. It has something for
40 everybody in this County. So it's a first of a partnership with Park and Planning and the
41 Heritage Tourism Office. We very proud that we were able to make our money work for
42 the County by this partnership, the state funded my part of the map, and Kate had
43 operating money for this. We're very grateful that it all came out. We have some for the
44 audience as well. But this is a great resource guide fore sights in the County and I'd like

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1 to thank Kate for her work and Christine and watch out, cause we're going to be back
2 with other projects.

3
4 Councilmember Praisner,
5 This is terrific? You want to make other comments? I know Mary couldn't be here this
6 morning, but go ahead.

7
8 Kate [Stookey],
9 Sure, on behalf of Mary Bradford, we wanted to introduce the map. It is about as
10 comprehensive as you're going to get. We have all of the activities and the parks listed
11 not just in geographic area but also by activity category, and L. L. Bean, REI, and
12 Hudson Trail Outfitters have agreed to distribute them out for us. So, we're reaching a
13 new branch of customers, not just those that are already coming to our parks, and all
14 the Maryland state Welcome Centers also have them for distribution. If you can't get
15 one today, or if you know other people who are looking for them, you know where to
16 send them. I wanted to thank also the Heritage Tourism Alliance for their partnership,
17 and Marilyn for bringing us up here.

18
19 Councilmember Praisner,
20 Well, thank you, this is very exciting, and as you said, we'll be looking for the next great
21 tool and goody, however you want to phrase it, Peggy, to highlight the wonderful place
22 that is Montgomery County. Thank you very much!

23
24
25 Councilmember Andrews,
26 Show us the map.

27
28 Councilmember Praisner,
29 I am.

30
31 Councilmember Andrews,
32 Open it up. Open it up. Open up the map.

33
34 Unidentified Speaker,
35 Could we get a picture?

36
37 Councilmember Praisner,
38 Here we go.

39
40 Councilmember Silverman,
41 It is hot off the printer, man.

42
43 Peggy Erickson,
44 It is hot off the printer.

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1 Councilmember Praisner,
2 Take a picture. Can we get it? It's upside down!

3
4 Councilmember Andrews,
5 Makes it even more interesting that way, trying to go backwards.

6
7 Councilmember Praisner,
8 Thank you very much.

9
10 Council President Leventhal,
11 All right, well, thanks very much to Heritage Montgomery, and the Parks Division of
12 Parks and Planning and the state of Maryland. Do we have agenda or calendar
13 changes Ms. Lauer?

14
15 Linda Lauer,
16 This week, we moved a few things. The Consent Calendar "D," is an action we were
17 planning action on a resolution to approve the County's highway noise policy. The
18 Committee wants to come back to that one more time. Legislative Session we're
19 removing expedited bill -- taxi cabs that will be rescheduled at a later date, and then on
20 the District Council session we are deferring Zoning Text Amendment 06-08, accessory
21 buildings one family residential zone. That will be rescheduled at a later date. We did
22 receive a petition this week, one supporting residential development on the web track.
23 And we do have minutes.

24
25 Council President Leventhal,
26 Okay.

27
28 Councilmember Andrews,
29 Move approval.

30
31 Councilmember Knapp,
32 We still have those. Second.

33
34 Council President Leventhal,
35 Ms. Clerk, we have minutes for approval?

36
37 Council Clerk,
38 We have minutes of May 11, June 20th and June 27th.

39
40 Council President Leventhal,
41 Mr. Andrews has moved and Mr. Knapp has seconded approval of the minutes for May
42 11th, June 20th, and June 27th, those in favor of approving the minutes will signify by
43 raising their hands. It is unanimous among those present. We now take up the Consent
44 Calendar which has had some items moved and some items added. Mr. Knapp has

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1 moved and Ms. Praisner as seconded approval of the Consent Calendar. Are there
2 comments on the Consent Calendar? Ms. Praisner.

3
4 Councilmember Praisner,

5 Just a request, I don't see Sonya but I'm sure she's listening. On the franchise
6 agreements, not on this agreement, but it occurred to me, I want to make sure when we
7 discuss one of the franchise agreements that we have, I don't care which one, that we
8 get assurances and an update that we are keeping permanent records of not only the
9 number of folks who are accessing our rights-of-way in order to provide technology
10 either business or broad government, or broad community I should say, and assurances
11 that we are keeping a record of the permits and the location so that we don't have any
12 miss utility issues associated with fiber and the right-of-way. Thank you.

13
14 Council President Leventhal,
15 Okay. Mr. Denis.

16
17 Councilmember Denis,

18 Thank you, Mr. President. I do have some observations and comments on several of
19 the Consent Calendar items. I also want to thank you for relaxing the dress code for my
20 benefit for the duration here.

21
22 Council President Leventhal,
23 We've all been talking about it.

24
25 Councilmember Denis,

26 Less anyone think it's for show, well *de facto*, I did put my x-ray up on my website for...

27
28 [LAUGHTER]

29
30 Councilmember Denis,

31 ...to get a second opinion. Less anyone think that that is just a show or to avoid wearing
32 a tie, which it's not. Just on some of the items on Item "A," the work program for our
33 Office of Legislative Oversight, I want to say how pleased I am that the work program
34 does include my request to audit the laws and regulations that govern redevelopment in
35 established neighborhoods. Last summer the study was deferred to accommodate the
36 fact finding review of the Clarksburg Town Center project. My request follows up on the
37 passage of the legislation I sponsored concerning the height of replacement homes and
38 the work that my seat mate has done on the Stormwater Runoff Bill. The audit is
39 intended to examine and provide recommendations on the laws and regulation that is
40 govern approvals of demolitions and renovations, the distinctions between renovations
41 and new construction, the policies the Department of Permitting Service has in place to
42 interpret and administer these rules, and the practices that DPS uses to carry out these
43 laws. During my work on the building height legislation I heard from many people with
44 concerns about the County's ability to adequately review building plans and proactively
45 enforce the law. We need to identify where our laws are vague, so that clear guidance

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1 can be provided by officials and the right staffing is available to review plans, conduct
2 inspections, and respond to community concerns. With regard to item E, the regulations
3 concerning Drummond, this of course requires a local permit by the town of Drummond
4 in addition to the building permits and other matters, and I think it's in keeping with the
5 tenor of our own County laws and a new state law that gives municipalities somewhat
6 greater authority in land use matters. We still have yet to address those areas that are
7 not incorporated and I think its important that we do so at some point. Item F, the
8 appointment of Leonard Grant to fill the vacancy on the Friendship Heights Village
9 Council, this is as a result of the passing of our friend Frank Vallejo. Leonard Grant is a
10 great leader in the community. He sits on the Transportation Management District for
11 Friendship Heights and is a leader in one of our buildings, 4620 in the Village. On item
12 J, on the appointments that we're about to confirm for the Commission for Women, I just
13 wants to take a special note and with pride that Tedi Osias is there to be appointed. And
14 I certainly was so pleased to have her working for me on two different occasions during
15 my tenure here on the Council. Thank you Mr. President.

16
17 Council President Leventhal,
18 Thank you Mr. Denis. If there are no further comments regarding the Consent Calendar,
19 those in favor of adopting it will signify by raising their hands. It is unanimous among
20 those present. We turn now to Legislative Session is there a Legislative Journal for
21 approval?

22
23 Council Clerk,
24 You have the journal of June 27th for approval.

25
26 Council President Leventhal,
27 Is there a motion to approve? Ms. Floreen has moved and Ms. Praisner has seconded
28 the Legislative Journal for June 27th. Those in favor will signify by raising their hands. It
29 is unanimous among those present. We have no bills for introduction. We have no bills
30 for final reading. We have now in District Council Session. We have Zoning Text
31 Amendment 06-22 before us, and we need a motion to establish a public hearing for
32 September 19th, Ms. Praisner has moved and Mr. Andrews has seconded. The
33 resolution establishing a public hearing for September 19th. Those in favor of
34 establishing the public hearing will signify by raising their hands. It is unanimous among
35 those present. We now have before us the Hearing Examiner's report and
36 recommendation on Application Number G-846. Are all parties here to make their
37 presentation?

38
39 Francoise Carrier,
40 Hi.

41
42 Council President Leventhal,
43 Good morning. Madam Hearing Examiner, please commence.

44
45 Francoise Carrier,

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1 Good morning. This is case number 846 it comes to you with a recommendations for
2 approval from technical staff and the Planning Board and myself. My report to you in
3 this case was written in conjunction with a second related case G-847, and I've
4 recommended approval of both applications on grounds that they are compatible with
5 the area, and they would serve the public interest and they meet the requirements of the
6 zone. This is a case where there is no development plan, no schematic development
7 plan, only a conceptual idea of how the development could proceed. So, it is purely
8 approving the requested zone which is the RT15 zone.

9
10 Council President Leventhal,
11 Ms. Praisner.

12
13 Councilmember Praisner,
14 Can we vote on the two together, or do we have to take separate votes since they were
15 filed separately? That's my first question.

16
17 Unidentified Speaker,
18 You can vote on them together.

19
20 Councilmember Praisner,
21 I just wanted to make, I had a couple questions and then want to make a comment. In
22 defining the area and making reference to the area, two things struck me. One the
23 references to the Lutheran Church nearby, and I was trying to find out looking back at
24 the timing of the application and process, I just wonder about making reference to
25 something that everyone knows is changing in that the Lutheran Church is moving.

26
27 Francoise Carrier,
28 I guess everybody except me.

29
30 Councilmember Praisner,
31 Okay, the Lutheran Church is moving and in fact is in the process slowly to their dismay,
32 but slowly going to be relocated, and I believe that's part of a relationship with the
33 Catholic Church, which is going to be building the center across the street for use. So I
34 found it kind of out of context, not to include that piece. Reference is also made to the
35 fire and the police station at the intersection, and we all know that's moving too, as part
36 of the grade separated interchange. And obviously as a Hearing Examiner, you're
37 dealing with the information that's presented to you, but I was kind of surprised whether
38 the Planning Board or someone might have made reference to those things that our
39 folks are aware of. The other comment I had, and I don't think it changes any of the
40 dynamics, but it does put it in a context of things that are known. This is the first time
41 that I can recall seeing a reference the one on page six to the deterioration in crime in
42 apartment complex to talk about that as a zoning intent to prevent detrimental effects
43 that are of a not necessarily structural nature, but can be obviously changed by other
44 you know, less structural and obviously needing to be substantial, but also wouldn't be

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1 the same kind of thing. I just wondered if you would comment on that piece of inclusion
2 within a record related to crime or negative conditions of a complex.

3
4 Francoise Carrier,

5 Yeah, I guess I standing alone that would certainly not be reason enough to grant a
6 rezoning. You're certainly right, but problems of crime can be dealt with without
7 changing the zoning on the land, and in fact, the applicant seems to have already made
8 great strides to bringing that problem under control. The overall development and
9 redevelopment plan that this applicant proposes, the evidence suggests would
10 contribute to improving the neighborhood in several ways, including that in general there
11 is an expectation that when you upgrade the physical features of a property, it often has
12 an impact of reducing crime, reducing the incentive for crime and this applicant
13 proposes to do that with a zoning change. Now, there is no reason to believe the
14 applicant wouldn't still do something if they didn't get the zoning change, but I guess
15 that I felt that it was, it made some contribution towards the appeal of the applications.

16
17 Councilmember Praisner,

18 I just found it unusual and I'm a little uncomfortable in making a rezoning in a decision
19 that talks about conditional situations that are, can change with resources or energy not
20 necessarily land use, unless we're talking about an urban blight area that we have
21 formally declared in that case, which might have other reasons and other pieces
22 because it's the first time I've ever seen it. First it made me uncomfortable because of
23 the substance of that rational and secondly, because I've not seen it before and I would
24 not want it to be used by anyone as a rational for rezoning.

25
26 Francoise Carrier,

27 If the Council is inclined to approve the applications, I believe that there is sufficient
28 evidence apart from that to support that decision, and the resolution can certainly be
29 changed to take out references suggesting that addressing problems of crime and
30 deterioration is one of the reasons for the Council's decision. If the Council would like
31 that change made...

32
33 Councilmember Praisner,

34 I would feel more comfortable with that, because I don't think that's a rational for
35 rezoning. Especially since we haven't designated a specific area for some specific
36 rational that might incorporate that. But I would feel uncomfortable that someone might
37 come in with statistics of one week or another and use them as arguments one way or
38 another. So I would like to move approval of both of the rezoning applications in front of
39 us, the amendments with the proviso that those references be stricken from our opinion.

40
41 Councilmember Knapp,
42 Second.

43
44 Council President Leventhal,
45 Okay, Ms. Floreen.

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1
2 Councilmember Floreen,
3 I just wanted to second Ms. Praisner's points, and I guess it's that paragraph on page
4 six that would be removed.

5
6 Francoise Carrier,
7 Is it an entire paragraph? And this is Circle six, I guess?

8
9 Councilmember Floreen,
10 Circle six, that's our action.

11
12 Francoise Carrier,
13 Right.

14
15 Councilmember Floreen,
16 Yes. We're not doing social reengineering here.

17
18 Francoise Carrier,
19 Well, I need to say I believe the Council needs to say something about promoting the
20 health, safety, morals, and welfare it's part of the purpose of the zone.

21
22 Councilmember Floreen,
23 Doesn't it say that elsewhere in the opinion?

24
25 Francoise Carrier,
26 There is a conclusion but I don't believe there is any reasoning supporting that
27 conclusion because that conclusion was based on the reasoning that we're now going
28 to remove. The Council might find it more appropriate...

29
30 Councilmember Floreen,
31 We never issued an opinion on this basis.

32
33 Francoise Carrier,
34 Well a never on deterioration, but there's always something saying that this would
35 promote the health, safety, morals and welfare in the RT zone, that is part of the
36 purpose of the zone. In general the findings are less specific than this. They are findings
37 such as this proposed development would...

38
39 Councilmember Floreen,
40 I think we can just include that as, we have to approve the language at this moment in
41 time? Mr. Farber? Do we have to approve this language at this moment?

42
43 Francoise Carrier,
44 Could I present a new resolution and the Council could consider it?

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Councilmember Floreen,
I don't want to delay the action, but I do want to be eliminate most of this paragraph.

Francoise Carrier,
Typically, if there weren't any evidence of deterioration in crime here I think I would have based the finding of health, welfare, and safety and so forth on the facts that the development would be compatible with the surroundings, and would make a positive contribution.

Councilmember Floreen,
Right.

Francoise Carrier,
So I can certainly put in language to that effect to replace the first, I guess it's the first four sentences of that paragraph if that would meet the Council's intent.

Council President Leventhal,
Hearing no objection.

Councilmember Floreen,
I think it would, okay.

Council President Leventhal,
Okay, then the motion before the Council is the approval of the Hearing Examiner's report as amended on both applications G-846 and G-847. The clerk will call the role on the combined motion.

Council Clerk,
Ms. Floreen?

Councilmember Floreen,
Yes.

Council Clerk,
Mr. Silverman.

Councilmember Silverman,
Yes.

Council Clerk,
Mr. Knapp.

Councilmember Knapp,
Yes.



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1 Council Clerk,
2 Mr. Andrews?

3
4 Councilmember Andrews,
5 Yes.

6
7 Council Clerk,
8 Ms. Praisner.

9
10 Councilmember Praisner,
11 Yes.

12
13 Council Clerk,
14 Mr. Leventhal.

15
16 Council President Leventhal,
17 Yes. It passes six to zero. Okay, now before the Council is the Hearing Examiner's
18 report on Application Number G-839.

19
20 Phil Tierney,
21 Good morning.

22
23 Council President Leventhal,
24 Good morning.

25
26 Councilmember Praisner,
27 You're looking younger.

28
29 Phil Tierney,
30 The case before you...

31
32 [LAUGHTER]

33
34 Phil Tierney,
35 ...this morning.

36
37 [LAUGHTER]

38
39 Councilmember Silverman,
40 No, I haven't seen you in a while, when was the last time you were here before us?

41
42 Phil Tierney,
43 After I retired my wife was working on my beard. For her birthday I shaved it off about a
44 five years ago. You've been pretty busy. This application is for the reclassification from
45 the R-200/TDR zone and the R-200 zone to the RTH zone of about 6 acres of land

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1 located at 1100, oh, 800 Darnestown Road. It's been recommended for approval by
2 both the technical staff, the Planning Board, and the Hearing Examiner.

3
4 Council President Leventhal,
5 There appear to be no questions. Is there a motion? Ms. Floreen.

6
7 Councilmember Floreen,
8 [INAUDIBLE], Mr. Chair.

9
10 Council President Leventhal,
11 Okay, Ms. Floreen has moved, and Mr. Knapp has seconded approval of the Hearing
12 Examiner's report on application G-839. Ms. Floreen your light is still on, did you want to
13 discuss it further?

14
15 Councilmember Floreen,
16 I want to comment I think it's a good look Mr. Hearing Examiner.

17
18 Phil Tierney,
19 Thank you.

20
21 Council President Leventhal,
22 Okay. Any further comments? The clerk will call the role.

23
24 Council Clerk,
25 Ms. Floreen.

26
27 Councilmember Floreen,
28 Yes.

29
30 Council Clerk,
31 Mr. Silverman.

32
33 Councilmember Silverman,
34 Yes.

35
36 Council Clerk,
37 Mr. Knapp?

38
39 Councilmember Knapp,
40 Yes.

41
42 Council Clerk,
43 Mr. Andrews?

44
45 Councilmember Andrews,



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1 Yes.

2
3 Council Clerk,
4 Ms. Praisner?

5
6 Councilmember Praisner,
7 Yes.

8
9 Council Clerk,
10 Mr. Leventhal?

11
12 Council President Leventhal,
13 Yes. The hearing examiner's report is approved on a vote of six to zero. Now before us
14 is the Woodmont Sectional Map Amendment, G-853. The PHED Committee has a
15 recommendation which we'll hear from Chairman Silverman.

16
17 Councilmember Silverman,
18 Thank you Mr. President. This is the implementation of the Woodmont triangle sector
19 plan that we approved on January 31, 2006. We had a public hearing, the
20 recommendations are consistent with amendment that we passed and the Committee
21 had no changes. We unanimously recommend approval.

22
23 Council President Leventhal,
24 There are no further comments or questions. The clerk will call the role.

25
26 Council Clerk,
27 Mr. Denis here?

28
29 Councilmember Praisner,
30 No.

31
32 Council Clerk,
33 Ms. Floreen.

34
35 Councilmember Floreen,
36 Yes.

37
38 Council Clerk,
39 Mr. Silverman?

40
41 Councilmember Silverman,
42 Yes.

43
44 Council Clerk,
45 Mr. Knapp.

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Councilmember Knapp,
Yes.

Council Clerk,
Mr. Andrews.

Councilmember Andrews,
Yes.

Council Clerk,
Ms. Praisner.

Councilmember Praisner,
Yes.

Council Clerk,
Mr. Leventhal?

Council President Leventhal,
Yes, the sectional amendment is approved by a vote of six to zero. Mr. Perez votes yes, the vote is seven to zero. Now before the Council is Zoning Text Amendment 06-13 it has been recommended by the PHED Committee. Mr. Silverman.

Councilmember Silverman,
Thank you Mr. President. This was introduced at the request of the County Executive to clarify a difference of opinion at the Board of Appeals as to what the significance of an S is. In any event this codifies the interpretation that folks always have had, that there have to be at least two buildings required to establish a building line in the R-60, R-90, R-150 and R-200 zones. We had a public hearing on it. Everybody thought that it was important to clarify this. The Committee recommended approval. There are other additional changes that the Committee recognizes that this section of the Zoning Ordinance could use, and we recommend that DPS take this issue up and recommend other additional changes, but we don't want to prevent this clarification from moving forward. There were no changes in what was introduced. Is that correct?

Council President Leventhal,
Right.

Councilmember Silverman,
That's not correct? Okay, Planning Board had it changed, oh right! Yes that's right, we had a small change from the Planning Board. Doesn't change the fundamental necessity and impact of the ZTA. That's the report.

Council President Leventhal,



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1 Okay, there are no comments or questions. The clerk will call the role on ZTA 06-13.

2

3 Council Clerk,
4 Ms. Floreen?

5

6 Councilmember Floreen,
7 Yes.

8

9 Council Clerk,
10 Mr. Silverman?

11

12 Councilmember Silverman,
13 Yes.

14

15 Council Clerk,
16 Mr. Knapp?

17

18 Councilmember Knapp,
19 Yes.

20

21 Council Clerk,
22 Mr. Andrews?

23

24 Councilmember Andrews,
25 Yes.

26

27 Council Clerk,
28 Mr. Perez?

29

30 Councilmember Perez,
31 Yes.

32

33 Council Clerk,
34 Ms. Praisner?

35

36 Councilmember Praisner,
37 Yes.

38

39 Council Clerk,
40 Mr. Leventhal?

41

42 Council President Leventhal,
43 Yes. The ZTA carries on a vote of seven to zero. Next before the Council is Zoning Text
44 Amendment 06-11, Wheaton Overlay Zone Revision. PHED Committee has a report
45 from Chairman Silverman.

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Councilmember Silverman,
Thank you Mr. Chairman. The Committee unanimously recommended approval of ZTA 06-11 with amendments. This is an attempt to create opportunities for revitalization of Wheaton, but at the same time protecting the nature of Wheaton being a small business hub. The specific recommendations that the Committee has are contained on page one, and what I'd like to do, I guess, go through these recommendations, actually it's on page one and two, and see whether there are questions or comments from Councilmember and work through it that way if that's all right, Mr. President.

Council President Leventhal,
Yeah, that's fine.

Councilmember Silverman,
The first one is...

Council President Leventhal,
Actually, maybe, do Ms. Praisner and Mr. Perez, the original sponsors want to make opening comments on the Wheaton Overlay Zone, and then we'll get into the content?

Councilmember Perez,
Sure. This as I mentioned previously is the function of roughly two years of conversations I believe. My first conversation was back in '03 with the community and the question presented was how can we transform Wheaton into a true smart growth zone? How can we do so in a manner that respects the unique character of Wheaton and how can we encourage retention of small business so that small business are not displaced by this. And how can we do so in a manner that results in Wheaton not being simply paved over? We heard a lot from the community about the issue of green space and the need to concentrate green space and we did a lot of visioning overall about the town center concept. There is currently a parking lot that is going to be the center of the new Wheaton, the new revitalized Wheaton, and what we all know is that we can not realize that vision under the current Overlay Zone concept. It would prohibit us from transforming Wheaton into the real urban community that we want it to be. And so this text amendment was an effort to allow for additional flexibility and density in the Overlay Zone area, which is the area we've got maps there, near the metro basically. And we have the precise contours on that map. And in exchange there were provisions, there are provisions in the ZTA that require that in order to get these bonus densities you have to reserve certain percentages of the building space for small business use. And one of the questions, and frankly I think probably one of the biggest questions we'll take up today is the issue of how long the period of time that use must remain in effect. Item number four on page one of the Jeff's packet refers to this. And the ZTA as introduced required street level space for ten years and the spirit of that enterprise was we wanted to obviously encourage small businesses to be there and remain there for ten years. We had a robust dialogue during the Committee consideration, and by the way I want to thank the Committee Chair for his prompt consideration of this amendment, I appreciate

16

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1 it. During the Committee process there was a recommendation that the ten year period
2 be reduced to three years. We have the Mayor of Wheaton here. Good morning, Mayor
3 Cantor, always a pleasure to see you and I want to thank you again for your unfailing
4 Commitment to Wheaton. Not only, it's like the, you know, I'm going to buy the Hair Club
5 for Men stock. I'm not only a stockholder, I'm a member. You know that commercial?
6 You're not only working for Wheaton, you're living in Wheaton and we appreciate all
7 your hard work. So I think one of the biggest issues that we're going to need to discuss
8 here, Mr. President and Mr. Chairman, is whether three years is actually the appropriate
9 time, because I have heard some feedback in the aftermath of the Committee
10 consideration as to whether perhaps this is the proverbial porridge is too hot, and the
11 porridge is too cold.

12
13 Councilmember Silverman,
14 If it's hard pour it out.

15
16 Councilmember Perez,
17 Yeah, and maybe we need something in between. And I think that is probably the issue
18 that will require the most thought and consideration and I understood, I mean, there are
19 arguments on both sides of this. I don't think anybody, everyone would agree it's really a
20 judgment call. It's very important to understand that this is the beginning of a process its
21 not the end of a process. I don't want expectations to be unrealistic as we move through
22 this. We expect that the Wheaton sector plan will be taken up sometime in the next four
23 years, is that a fair statement?

24
25 Jeff Zyontz,
26 Yes, starting next year.

27
28 Councilmember Perez,
29 And this is really we didn't want to wait because there is too much potential there to
30 allow it to wait. And I know the beginning of the process is next year, but the more
31 important question is when would that process end. And it's conceivable that four years
32 from now, we'll still be working through that process because there are a lot of master
33 plans and sector plans that have been delayed through no fault of anybody. So the
34 queue is long. And given that queue we wanted to have something in place as an
35 interim measure. So, this is really is important for the residents of Wheaton to
36 understand that this an important step, but it's not the last word that people will have.
37 And so, as we debate this issue of three years versus ten years it is important to
38 understand a broader context. That broader context is that we will have another bite at
39 this apple when we take up the sector plan, and this will give us an opportunity to
40 consider that more, again. And it may be what we do now we decide or a future Council
41 decides is perhaps something that should be tweaked. So I think the majority of what is
42 in here will be what we will vote on, and I think we should probably spend a little time
43 discussing that issue that is item number four on page one. I think that's the one that's
44 going to be the most subject to debate. So thank you Mr. President for those the
45 opportunity to speak and thank you to the community once again for their remarkable

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1 input and great ideas. I haven't had an original idea in years and this is another example
2 of taking something the community came up with and running with it. Thanks to Joe for
3 your very vigilant and competent work.
4

5 Council President Leventhal,
6 Ms. Praisner you have the floor and I'm going to ask you to Chair for just a moment
7 please.
8

9 Councilmember Praisner,

10 Thank you. I wanted to add my comments in to begin with just by thanking everyone
11 who's been involved. I had the pleasure Saturday night, along with my colleague and
12 Committee Chair Mr. Silverman, to spend some time at the kick off for the Wheaton Arts
13 and Entertainment District. A wonderful band, nice evening, even a little breeze to help
14 with the heat and some fan to help with that as well, and nice food and good
15 conversation. And I'm glad that my colleague, Councilmember Perez, raised the issue
16 number four because I think that was the only issue that I heard any feedback about
17 where there is some ongoing concern. I think the conversation on that issue when we
18 get to it, either in order or last or however we deal with it is the one that probably that
19 definitely does require some modification in my view in order to filter, not just the issues
20 that we discussed at the Committee about ability to expand, et cetera the small
21 business, but also the issues of leases and some of the other concerns that folks had,
22 some of which were new for me to hear on Saturday evening. So I think the other point
23 that I would make is that this is an interim and I think my colleague mentioned that as
24 well. The master plan process must move expeditiously, and I think having had this
25 conversation hopefully, I'm confident that although a whole myriad of issues will come
26 up that there is the capacity to move sprightly through them, because we've had the
27 conversation about such a two-year conversation about these issues. And the most
28 telling point for me is when you look at the activity that is going on and has gone on in
29 Wheaton's Central Business District how little of it has occurred within the CBD as
30 opposed to outside the CBD, and it would seem to me that we would want to
31 concentrate that effort and energy and activity and hopefully encourage the
32 development in the context of what we want for Wheaton to be happening in the Central
33 Business District, very close to metro, very close to and within the places where we are
34 investing significant resources and time and infrastructure. So with that in mind, I will
35 turn it over to the Committee Chair, Mr. Silverman to walk us through the packet.
36

37 Councilmember Silverman,

38 Thank you. Let's do this. We'll go through the noncontroversial ones and then we'll
39 come back where folks want to have debate. So let's start with the first one. Committee
40 recommended listing the prohibition on the development reasoning that limits
41 development on the metro rail station should be less constrained, so that's the policy
42 conclusion we reached.
43

44 Councilmember Praisner,

45 I see no lights, I'll stop you when I see a light.

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1
2 Councilmember Silverman,
3 Secondly, the Committee would allow optional method density without a requirement to
4 buy TDRs. This continues our extensive discussions here about TDRs and in light of the
5 untested market in Wheaton, and the likelihood that there's going to be some type of a
6 comprehensive proposal coming out of the this Agricultural Advisory Committee, the
7 Committee believes that there should not be a requirement for optional he method to
8 buy TDRs in Wheaton. All right? Committee recommended a height limit of 125 feet,
9 however a 100 height limit is recommended for the CBD-2 area near a residential
10 community. The northwest corner of the Overlay Zone is zoned CBD-1 which is a 90-
11 foot height limit, and the Committee recommended that the Overlay Zone height limit
12 should not be increased for work force housing or MPDU or work force housing, There's
13 a map. Where's the map?

14
15 Councilmember Praisner,
16 Right there.

17
18 Councilmember Silverman,
19 But where's the map about the heights?

20
21 Joe Davis,
22 Actually we excluded the map because we only had the one area.

23
24 Councilmember Silverman,
25 Right, it's the upper northwest corner, why don't you just point it our where we're going
26 to stick with...

27
28 Joe Davis,
29 [INAUDIBLE]

30
31 Councilmember Silverman,
32 Right, that won't change.

33
34 Councilmember Praisner,
35 Joe, just a minute. If Khalid, you'd push your mic so that Joe can talk through the mic,
36 that would help. Thank you. Joe Davis.

37
38 Joe Davis,
39 Joe Davis Wheaton Redevelopment Program. And the area that's been developed with
40 the Pulte townhouses in the northwest corner of zone CBD-1 has a height limit of 90
41 feet already. The area east of Fern Street between University Boulevard on the north
42 and Reedy Drive on the south that's where the Committee had recommended a 100-
43 foot height limit.

44
45 Councilmember Silverman,

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1 Okay.

2
3 Jeff Zyontz,

4 And what's in the Zoning Text Amendment is described in words not by mouth?

5
6 Councilmember Silverman,
7 Right.

8
9 Councilmember Praisner,
10 Okay, I'm sorry.

11
12 Councilmember Silverman,
13 All right. We know there is going to be discussion about four so we'll come back to four.
14 Number five, Planning Board requested specific text language to require optional
15 methods to construct the street facade. The Committee expects that the Planning Board
16 will require street facades but did not want to make any specific requirements and
17 doesn't believe that detailed guidelines are appropriate for the Zoning Ordinance.

18
19 Council President Leventhal,
20 Okay, no other lights.

21
22 Councilmember Silverman,
23 Number six, the Committee recommends removal of proposed bonus density and
24 optional method projects for having 60% of a projects street level for small street level
25 spaces from the Zoning Text Amendment. We didn't think there was a reason to have
26 that in there. Okay? Number seven, the Committee supports the bonus provision for
27 standard method of development projects, does not recommend excluding bonus space
28 from floor area ratio calculations and recommends describing the extra space as a
29 bonus.

30
31 Council President Leventhal,
32 Mr. Subin -- Mr. Subin has a question.

33
34 Councilmember Subin,
35 Why did the Committee make that recommendation?

36
37 Councilmember Silverman,
38 Now I have to go back and read this. Jeff, do you have the short answer?

39
40 Jeff Zyontz,
41 Principally because it's the way things are generally calculated that the calculate FAR in
42 one direction. You don't exclude something from FAR in a normal course of events. So
43 it was no difference in the substance of what's being recommended, just a difference in
44 how it's calculated.



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1 Councilmember Subin,
2 Is that transparent to the public how that's being done?

3
4 Jeff Zyontz,
5 I believe so.

6
7 Joe Davis,
8 Mr. Subin...

9
10 Councilmember Subin,
11 Transparency shouldn't be believed, it is or it is not.

12
13 Jeff Zyontz,
14 I've heard no objections to just describing it in a different manner.

15
16 Joe Davis,
17 Mr. Subin, if I can help, when the text amendment was originally drafted it was drafted
18 as in effect not counting that density. The reason for that was because potentially it
19 could bump a density just above the optional method. It was not intended to kick in any
20 of the optional method requirements. So the effect was not count it. But I think in
21 transparency is better served by saying we will count it but just recognize it will not
22 trigger the optional method. So, I believe this approach by the Committee is more
23 transparent.

24
25 Councilmember Subin,
26 And everybody's in agreement.

27
28 Jeff Zyontz,
29 Yeah.

30
31 Joe Davis,
32 Yes, sir.

33
34 Councilmember Silverman,
35 Okay, next item, true green space was important to the Committee, not to be confused
36 with things that are just merely painted green. So to that end the Committee
37 recommends, that's right, to the end the Committee recommends amending the
38 provision requiring 50% of the public use space for green area, but would not include
39 sidewalks, walk ways, swimming pools and other hard surfaces as part of that green
40 area. Green is green.

41
42 Jeff Zyontz,
43 Just a comment, the green area definition within the Zoning Ordinance includes those
44 types of hard surfaces, so the Committee wanted to exclude them.



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1 Councilmember Praisner,
2 Another problem.

3
4 Jeff Zyontz,
5 Sidewalks are green area, not green space, separate definitions in the Zoning
6 Ordinance.

7
8 Councilmember Praisner,
9 Do you want to introduce that Zoning Text Amendment?

10
11 [LAUGHTER]

12
13 Councilmember Silverman,
14 All right, number nine. The Committee also recommends only allowing existing buildings
15 that do not exceed 85% building coverage to have additions without meeting the 75%
16 coverage limit if they provide 30% of their street level space as small space. The
17 Committee doesn't recommend that any new, is this transparent?

18
19 [LAUGHTER]

20
21 Councilmember Silverman,
22 Okay. Questions on that? It is, the question is, is it understood?

23
24 Jeff Zyontz,
25 I hope it's a lot clearer in the ordinance itself. It's explicitly a grandfathering provision for
26 those spaces that want to add...

27
28 Councilmember Silverman,
29 Right, they want to expand.

30
31 Jeff Zyontz,
32 ...expand without expanding their coverage.

33
34 Councilmember Silverman,
35 We don't want to penalize them. Okay, number 10. Committee supports review, I'm
36 sorry Committee supports removal of the site plan requirement for projects less than
37 20,000 square feet of gross floor area. We do recommend that projects more than
38 15,000 square feet of gross floor area of new construction or an addition that makes the
39 completed building more than 15,000 square feet of gross floor area be required to
40 provide streetscaping. This was fairly well discussed, and we're trying to create the
41 balance between reviewing, providing streetscaping as opposed to full blown site plan
42 requirements in terms of the potential burden on redevelopment projects.

43
44 Council President Leventhal,
45 There are no questions.

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Councilmember Silverman,
Number 11, Committee recommends expanding the use as allowed as recommended in the ZTA. The Planning Board staff recommended excluding automobile sales, indoor boat sales, department stores, drive-in restaurants, hardware stores greater than 10,000 square feet and appliance repair shops. The Wheaton Redevelopment Office staff recommends allowing the uses and the Committee believes that these uses are suitable for the Wheaton CBD.

Council President Leventhal,
I'm just curious, just as a matter of interest, these seem fairly random these uses that the Planning Board didn't like. Why not these?

Khalid Afzal,
Khalid Afzal with the Community Planning. I think the idea was to keep the small texture of small retail in Wheaton these are users that use a big floor plan. Having on the ground floor means would you lose that tenants or leases in a building. They don't, these are more suburban shopping centers kind of uses rather than downtown area where you want more walkability.

Council President Leventhal,
Okay. Thank you.

Councilmember Silverman,
All right. Number...

Joe Davis,
If I could just clarify these are uses already allowed in the Overlay Zone. The legislation wasn't proposed to change them. I think the board was commenting they thought maybe rethinking those uses would be in order.

Council President Leventhal,
Thanks.

Councilmember Silverman,
The Committee, number 12, the Committee recommends allowing a project plan to be approved as part of the subdivision process providing that the Planning Board makes the findings required in the optional method process. That's just a technical issue not substantive, but allows things to be consolidated. Okay. I think we got two issues. What's not numbered here which I'll call 13, which is minimum lot size and then the other issue of how many years it is. So let's take up number 13 first, this is a discussion that the Council had in connection with the Woodmont Triangle Sector Plan. The Planning Board had sent over in connection with the Woodmont Triangle a suggestion that there could only be optional method for where there is assemblage of 18,000 square feet of land area, and the Council after reviewing that process decided that that

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1 was a disincentive to potential revitalization projects that just couldn't get to that level.
2 And now you're going to have to refresh my memory. We put in no...

3
4 Jeff Zyontz,

5 There is a requirement that says if its recommended by the sector plan to have land
6 area less than 18,000 it could be less than 18,000.

7
8 Councilmember Silverman,

9 Right. But I'm saying in the sector plan we put in no requirement.

10
11 Joe Davis,

12 No requirement.

13
14 Councilmember Silverman,

15 No requirement at all.

16
17 Joe Davis,

18 Right.

19
20 Councilmember Silverman,

21 So that if somebody wants to put together a five or 10,000 square foot in Woodmont
22 Triangle that would be permissible, because there were some folks, and I think what
23 has been described here by Jeff on the bottom of page two, is that this is kind of a
24 policy issue about how much flexibility you want to provide for small scale projects, the
25 higher the square footage requirement less likely you're going to see any small scale
26 projects, and the more likely you'll see assemblage. So the Committee essentially said
27 let's take this up with full Council and see where folks are. And I guess the question I
28 would have for anybody at the table is so from a policy standpoint, recognizing where
29 the Planning Board was, but and still is, but what are the pros and cons, more
30 importantly, what's the difference between you know, in other words, if we provided the
31 flexibility in the Woodmont Triangle area for smaller scale development, why wouldn't
32 we do the same thing in Wheaton? What are the pros and cons of that? Anybody want
33 to...

34
35 Jeff Zyontz,

36 The only difference you have really is, the fact that you had Master Plan guidance on
37 what you should of shouldn't do, and obviously in Woodmont you said that no guidance
38 is required in terms of size or scale. There is certainly some, some physical minimums
39 space that's required once you get this density. Why is that? Because you need space
40 for elevators, you're dealing with densities that will be high rise and require
41 infrastructure to support that. I don't know what that minimum is as an absolute, you
42 know, certainly other jurisdictions have lower sizes than 18,000 square feet, and
43 whenever you're in an urban area you often have parcels less than 18,000 square feet
44 in size. But I can't tell you what the minimum should be. What I did hear from the

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1 Planning Board was that they were, they thought this would be a subject for the master
2 plan.

3
4 Councilmember Silverman,
5 Well, which we'll take up in four years. Thank you. Yes.

6
7 Natalie Cantar,
8 As I know that you all have heard from the community already, the community would
9 prefer seeing a substantial amount of small-scale development and I think they have
10 tolerance for a few large buildings, a few 10- and even 12-story-type buildings, but they
11 certainly don't want to see more than that.

12
13 Councilmember Silverman,
14 Anybody else? Okay. You know, I guess, you know there is the process issue one
15 would take these things up. There's the crystal ball gazing to try to figure out what is
16 going to be there. There's the fact that we're going to see, somebody's going to see
17 amendments to the master plan or suggest the changes in four years, I just think from a
18 policy standpoint that if there is opportunities to have some smaller-scale development,
19 that certainly to me makes a little bit more sense in terms of that flexibility. It actually
20 doesn't prevent anyone from doing this kind of assemblage. It's a question of with
21 whether somebody has a 10,000-square-foot land area they want to do something with,
22 there may be the have the opportunity to do that and we don't seem to be providing that.
23 So, I am going to move that we don't have a square foot minimum.

24
25 Council President Leventhal,
26 Okay. Discussion on the motion, Ms. Floreen.

27
28 Councilmember Floreen,
29 Thank you. As I recall, and we talked about this in the Woodmont Triangle exercise. The
30 existing standard was not set in stone. It was a number that was arrived at, what was it?

31
32 Councilmember Silverman,
33 Three times six.

34
35 Councilmember Floreen,
36 Three times six.

37
38 Councilmember Silverman,
39 Three times 6,000.

40
41 Councilmember Floreen,
42 Nothing that had any -- wasn't set to a magical standard or national standard. It was a
43 number that was picked. A dart board. And the challenge is, especially in Wheaton, if
44 you, what you want to do is to encourage little steps to occur, that is the only way it's
45 going to happen. The current requirement actually demands assemblage. It requires

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1 bigger projects, and I think that is actually directly contrary to sort of vision in a sense of
2 Wheaton. So I'm kind of disappointed the Planning Board didn't look at it that way. I
3 appreciate the fact that that is outside the Master Plan process, but putting that to one
4 side, the policy issues seem to be self-evident, what do you think, Mr. Davis?

5
6 Joe Davis,

7 My thought on it is from a redevelopment perspective, this will provide additional
8 flexibility to attract different types of development to come in. I think, what we can't
9 answer is where the market is, as to whether or not the smaller...

10
11 Councilmember Floreen,

12 You know, you'd make a lot of money if you know where the market is.

13
14 Joe Davis,

15 Well, I think that from the standpoint of an optional project, small size, you have
16 increased requirements in terms of public use space, in terms of amenity, and these
17 are, you know, to whether that works or not, I think that is market driven. So, I think
18 what we'd have to do is if the flexibility is there, we can begin talking to people about
19 projects, and begin to get a sense of where it is. I think that's what the effort would be in
20 Bethesda, in terms of Woodmont Triangle to have that flexibility capability, you create
21 that same capability in Wheaton. So I see it as a positive.

22
23 Councilmember Floreen,

24 And it can always be revisited in the next master plan.

25
26 Jeff Zyontz,

27 And certainly 18,000 is a significant constraint to Wheaton, where there is only 13
28 privately owned parcels that are above 18,000 square feet, and most of parcels like
29 3,000 square feet.

30
31 Councilmember Floreen,

32 The facts are oh so useful. Yeah. Okay, thank you.

33
34 Council President Leventhal,

35 Okay, any further discussion on the amendment? Okay, if not, those in favor of the
36 amendment will signify by raising their hand. It's unanimous.

37
38 Councilmember Silverman,

39 Okay, back to the last item, the Committee supported a requirement for small streets,
40 we're not using the word small business. We're just using the word "small." Small street
41 level spaces as a condition of the optional method of a development project approval.
42 We recommended the street level space as a condition for standard method density
43 bonuses, and we took out small business because nobody could define it. And so what
44 is in the zoning text amendment is space. The size of the space that we're talking about.
45 And as yet came over, as it was introduced, rather, it required 10 years, there were

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1 some push back about what that would actually mean and the Committee
2 recommended that it be provided for three years, and that's where we are and let's hear
3 from folks who want to do something else.

4
5 Council President Leventhal,
6 Mrs. Praisner.

7
8 Councilmember Praisner,
9 Yeah, as I said, I had significant conversation with folks on Saturday about the issue,
10 and I thought as we were talking about it in the Committee's discussion, we were talking
11 about capacity to grow and how you might be bound, and you would have a small
12 business that couldn't expand. As we, as the conversation, and we also were talking
13 about in the context of this as an interim measure, because we're looking to the master
14 plan. A process to examine all of these issues. The more conversation on Saturday,
15 though, revolved around the fact that, from small business owners in the area. Who had
16 concerns with the small amount of time that we were talking about, talked about the fact
17 that the expansion capacity really wasn't the problem given the size that they're talking
18 about right now. That they are, and that that wasn't inhibiting them or concern of them
19 and that if I, if I really understood small businesses, I'd know that the amount of time
20 we're talking about does, is not the reasonable amount of time in which small
21 businesses really expand. It's longer than that, before you get going and moving. So,
22 although they were sympathetic to the concern that we had discussed, the years were
23 not realistic from a small business perspective. What that were concerned about is
24 maneuvering the lease process with current property owners, et cetera. And so I am
25 going to move that the three years be changed to six. I know the community would
26 prefer even more than that, but I think 10 is too much, given the time period we're
27 talking about, because we want to make modifications, because we have the master
28 plan process and I also think that we're talking about stabilizing small businesses and to
29 some extent, they saw the length of time as they function the stabilization of the small
30 business. Not a function of growing so big that you can't stay where you are. And that's
31 where I was thinking, so I think the community would be supportive of and I will make
32 the motion to change the three years to six.

33
34 Councilmember Perez,
35 Second.

36
37 Council President Leventhal,
38 Okay, discussion on the motion? Chairman Silverman?

39
40 Councilmember Silverman,
41 No.

42
43 Council President Leventhal,
44 Anyone else? Okay, the motion made by Mrs. Praisner and seconded by Mr. Perez.
45 Those in favor of the amendment will signify by raising their hands. In favor would be

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1 Mr. Knapp, Mr. Andrews, Mr. Perez, Mrs. Praisner, myself, Mr. ... oh, it's unanimous. It
2 is unanimous.

3
4 Councilmember Perez,
5 Couldn't see...

6
7 Council President Leventhal,
8 Some members.

9
10 Councilmember Perez,
11 That guy at the end there.

12
13 Council President Leventhal,
14 Some members were taking time to make up their mind. Reading the tea leaves.

15
16 Councilmember Silverman,
17 That's it.

18
19 Council President Leventhal,
20 Well, that's it. Okay, now before the council is ZTA 06-11. The clerk will call the role.

21
22 Council Clerk,
23 Mr. Denis?

24
25 Councilmember Denis,
26 Yes.

27
28 Council Clerk,
29 Ms. Floreen?

30
31 Councilmember Floreen,
32 Yes.

33
34 Council President Leventhal,
35 As amended.

36
37 Council Clerk,
38 Mr. Subin?

39
40 Councilmember Subin,
41 Yes.

42
43 Council Clerk,
44 Mr. Silverman?



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1 Councilmember Silverman,
2 Yes.

3
4 Council Clerk,
5 Mr. Knapp?

6
7 Councilmember Knapp,
8 Yes.

9
10 Council Clerk,
11 Mr. Andrews?

12
13 Councilmember Andrews,
14 Yes.

15
16 Council Clerk,
17 Mr. Perez?

18
19 Councilmember Perez,
20 Yes.

21
22 Council Clerk,
23 Ms. Praisner?

24
25 Councilmember Praisner,
26 Yes.

27
28 Council Clerk,
29 Mr. Leventhal?

30
31 Council President Leventhal,
32 Yes. The zoning text after the amendment passes 9-0, the council stands in recess...

33
34 Councilmember Denis,
35 Mr. President? I was temporarily absent when the Woodmont Triangle amendment was
36 voted on. I would like to be recorded in the affirmative. I believe it was unanimous.

37
38 Council President Leventhal,
39 Without objection, Mr. Denis be added voting in favor of the Woodmont Triangle, and
40 Mr. Perez would also like to be added as voting in the affirmative. This is the Woodmont
41 Sectional Map Amendment, am I right on this? What we're talking about?

42
43 Councilmember Perez,
44 Yeah.

45

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- 1 Council President Leventhal,
- 2 Okay. All right, Mr. Denis and Mr. Perez will be added. The council stands in recess
- 3 until the hour of 1:30.

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1

2 Council President Leventhal,

3 Good afternoon, ladies and gentlemen, this is a public hearing on Zoning Text
4 Amendment 06-18: Planned Retirement Community Zone Development Standards,
5 which would amend the purpose provision and development standards to allow
6 development to occur on smaller tract areas, would allow all uses permitted in the I-4
7 zone provided such uses are located within 3,000 feet of an airport, and are shown on a
8 development plan approved by the District Council pursuant to division 59-D-1, and
9 generally amend the PRC zone. The record closes immediately at the end of this
10 hearing. The PHED committee is tentatively scheduled to take up this matter on July
11 24th at 9:30 a.m. Please call (240) 777-7900 to confirm. Our first panel includes Greg
12 Russ, from the Montgomery County Planning Board, Mr. Jack Fitzgerald, Mr. Norman
13 Dreyfuss, Mr. Bob Spaulding, and Ms. Meredith Saini. Mr. Russ, please proceed and
14 state your name clearly for the record.

15
16 Greg Russ,

17 For the record, Greg Russ from the Montgomery County Planning Board. The
18 Montgomery County Planning Board reviewed Zoning Ordinance Text Amendment
19 Number 06-18 at its regular meeting on July 13th, 2006. The Board recommends the
20 following comments be transmitted to the Council. The Board opposes the Zoning Text
21 Amendment if the provision for allowing I-4 uses in the PRC zone is not eliminated from
22 the proposal. The Board does not believe I-4 uses are appropriate in a Planned
23 Residential Community. The Planning Board is in agreement with the modifications to
24 the Text Amendment as recommended in the technical staff report with one exception,
25 the Board recommends changing the phrase "adequate highway access," which is part
26 of the purpose clause to "adequate road access." The Planning Board also has grave
27 reservations about any ZTA that would facilitate residential development adjacent to an
28 airport. Commissioner Bryant expressed concern with actually equating the merits of
29 this Text Amendment with a specific tract of land that is currently not zoned PRC. The
30 subject Zoning Text Amendment was introduced to clarify and modify certain provisions
31 of the PRC zone that were not adjusted at the time of the reduction in tract size from
32 750 acres to 25 acres. In addition, a potential user of the minimum 25-acre tract
33 provisions initially requested to allow I-4 uses in the PRC zone if the uses are located
34 within 3,000 feet of an airport and are shown on a development plan. The potential
35 property is referred to as the Webb Tract which includes 134 acres of I-4 property

31

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1 northwest of the Montgomery County Airpark. Land use policy and planning around the
2 Airpark has emphasized the importance of compatibility and safety by creating parkland
3 at either end of the runway and nonresidential zoning adjacent to the airport. The Webb
4 Tract is the last undeveloped parcel of significant size near the airport. In light of an
5 expected local Map Amendment to rezone the Webb Tract it is imperative that decision-
6 makers be aware that applying a residential zone to this property would reverse a long-
7 standing land use policy for parcels around the airport, and for this property specifically.
8 If this land use policy is altered the viability of the airport at this location may become a
9 consideration for the County. Thank you.

10
11 Council President Leventhal,
12 Mr. Fitzgerald. Press the button in front of your microphone.

13
14 Jack Fitzgerald,
15 How about that, can you hear me now?

16
17 Council President Leventhal,
18 We can hear you now.

19
20 Jack Fitzgerald,
21 Like the commercial.

22
23 [LAUGHTER]

24
25 Councilmember Praisner,
26 I like yours better.

27
28 Councilmember Silverman,
29 We don't know anything about commercials, do we?

30
31 Councilmember Praisner,
32 I like yours better, Jack.

33
34 [LAUGHTER]

35
36 Jack Fitzgerald,
37 You know I don't.

38
39 [LAUGHTER]

40
41 Jack Fitzgerald,
42 I don't know anything about land use either, but here I am. My only issue, well, I have
43 two issues. The biggest problem is safety. The proposal would call for 135-foot height
44 limitations. That's like building a big tower at the end of the runway. The end of the
45 runway is a little pink dot. That's the end of the runway and the green area is the

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1 proposed rezoning. And I just learned about this this morning, that's why I haven't
2 written to you or called you or anything. Incidentally, as a senior, I kind of feel peculiar
3 that I'd be relegated to industrial zoning. I mean, you can do better than that. This is a
4 wonderful place to live. I love this county, lived here forever, and you can do better than
5 an industrial tract for seniors. But the problem here is that when you're on short final and
6 on instrument approach, in bad weather you can make a mistake and drop below the
7 glide slope. If do that here you're going to run into a building. Now, that's not fair. We
8 just shouldn't have obstacles like that for pilots to deal with. I'm an old pilot. There is an
9 old saying "There are no bold, old pilots." I would have to be bold to fly through -- see,
10 you got me saying it -- through the buildings. I don't want to be flying through the
11 buildings on short final when the weather is bad. And this is the approach that everyone
12 has to use when the weather is down to get home. The other thing is we probably
13 should make this runway longer. It's long enough now for people to fly jets in and out of
14 there. I fly one, a twin engine jet, if it was a little bit longer it would be safer, and all
15 those high-tech companies that we like to attract to this County would be pleased at
16 that. A lot of them are going to Frederick now. So, please don't make me fly into a
17 building on the way home. And you can give me a better place to live than an industrial
18 tract of ground. Thank you very much. If you have any questions I'm here to answer
19 them.

20
21 Council President Leventhal,
22 Mr. Dreyfuss.

23
24 Norman Dreyfuss,

25 Thank you. Norman Dreyfuss, Executive Vice President of IDI, we're the developer of
26 Leisure World, the only PRC in the County. Leisure World, the PRC zone was
27 developed for over 40 years ago and in 40 years not one other PRC has developed in
28 the County. That's the case because the PRC zone was written specifically for the
29 Leisure World tract and is so restrictive it does not allow other developments of this type
30 to be built. In 1995 we introduced a similar zone in Loudoun County, and since that time
31 over half a dozen senior communities have been built because the standards have been
32 more liberal than in this County. I'm not here about the Webb Tract. I am here about the
33 PRC zone, which should be made usable for anyone in the county in lots of locations as
34 a Floating Zone, as it was intended, especially with our population increasing in senior
35 age so rapidly. I'm in agreement with the changes recommended at the Planning staff,
36 but not the comments submitted. There is one area that I think needs amendment that
37 was in the original text and that was a setback from the side yard. Right now it's 500
38 feet because Leisure World originally was 750 acres and 500 feet made a lot of sense
39 for higher buildings. I think it's very dependent on what you're next to as to how high
40 your building should be. The concern about the airport, concern about industrial,
41 concern about residential single-family should all dictate what distance is, not the zone
42 itself. So, I think the 100 feet, and at a maximum, one foot for every foot of height 135
43 feet from the border may make some sense. 185 feet puts us right back in the soup
44 we're in now, where we won't get more development. So again, my comments are not
45 on the Webb Tract, but on the PRC in general. There are other opportunities in this

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County to use the PRC zone if it were made more adaptable. So I support the Planning Board, especially the change on highway to road which I think was important. The only other one I would recommend is 100 feet be either put back or one-to-one ratio from the property line. When the PRC zone is asked to be put on a piece of property the development plan has to come with it. A preliminary plan and a site plan. That's the time to talk about what heights belong where, what should be close to industrial, to residential, not at the broad text of the PRC zoning category. I think it would be a mistake to make this so restrictive, considering one particular tract of property that would not be used again. So my recommendation is to follow their comments or their suggestions on changes except for the setback. Thank you.

Council President Leventhal,
Thank you. Mr. Spaulding.

Bob Spaulding,

Good afternoon I'm Bob Spaulding with Miller and Smith, we're the owner of the Webb Tract on Snouffer School Road. We're pleased to see this Text Amendment and we think there are a number of needed improvements that the PRC zone needs that this addresses. And we agree that the current provisions make it very difficult to build an active adult community. Over the last year or so we've received substantial interest from the community to develop the Webb Tract for senior housing. And although the Text Amendment was prepared while the Webb Tract was under contract to be purchased by IDI, we now have reviewed the introduced Text Amendment, and have a couple of changes that we would recommend. Before summarizing I'd like to note that you will hear other testimony about the Airpark, you've already heard some, and one of the main issues that the opponents have raised is compatibility of senior housing on the Airpark. Our preliminary analysis indicates that senior housing development on Webb Tract would comply with FAA regulations, the FAA land use compatibility guidelines, and would result in buildings that will comply with the approach services as currently stated in the 2002 Montgomery County Airpark Study. We've reviewed that pretty closely. We will be retaining additional consultants to look at that in more detail. As part of the Map Amendment process the Council will certainly have an opportunity to ensure that that would not occur, that we would not be violating anything along those lines. As -- our specific comments are we support the recommendation to change highway to road. I think that would be helpful. And we also believe that the recommended insertions on lines 16 through 19 could create unintended consequences by ignoring the other facilities in the vicinity of it. If you look at Riderwood, for instance, there is a grocery store less than a mile away, but it's a significantly -- it's a large parcel and you could argue that, based on the way this is written now, if that came through this Text Amendment you would think you would need a grocery store there. We think that it's already covered on 11 through 13 that allows you to look at those facilities. On the reduction or elimination of the I-4 provision, we agree that should come out. My understanding is that was to accommodate the MCPS deal that was under contract when we purchased the property. After talking with Mr. Russ we understand that would be allowed as a publicly-owned and operated use in the PRC zone. On the height, we

34

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1 would say we're fine on the residential, on having the 185-foot setback for 135-foot
2 building from a residentially zoned and used property, but we think the one-to-one, or
3 the 100-foot setback would be more appropriate on areas that are not surrounded by
4 residences. It would allow us to have more compatibility with adjoining residential if we
5 had the flexibility on the nonresidential portions. And finally we recommend that a
6 provision should be added to 59-D-1.61-A that allows the Council to grant a PRC
7 application where a Master Plan does not provide specific guidance. And the
8 recommended text is shown on page six of the attachments. Thank you for your
9 consideration of our comments. We believe the County's ability to meet its senior
10 housing needs is greatly improved by this Text Amendment, and the recommended
11 changes will be very helpful. Although we've indicated intention to seek PRC zoning,
12 this Text Amendment does not approve the PRC zone on the Webb Tract. It does allow
13 for future applications and the detailed analysis that would follow. Thank you very much.

14
15 Council President Leventhal,
16 Thank you. Ms. Saini.

17
18 Meredith Saini,

19 My name is Meredith Saini and I'm a flight instructor at the Montgomery County Airpark
20 in Gaithersburg. I've been a County resident for the last six years and currently live in
21 Bethesda. I'm Co-President of the Montgomery County Airport Association, a non-profit
22 organization established in Maryland in 1986 to promote the enjoyment and welfare of
23 the Montgomery County Airport. I'm testifying today in opposition to the proposed
24 Zoning Text Amendment 06-18 in both my personal capacity and as MCAA President.
25 There can be no doubt that the reason we're all here is the desire on the part of some to
26 develop the Webb Tract beginning a mere 900 feet from the airport's runway for high-
27 rise seniors' housing. As we understand it from testimony and discussion at the
28 Planning Commission, there are no other 25-acre sites in the County currently known to
29 be under consideration by anyone for planned retirement community development.
30 Because such development on the Webb Tract would be a bad idea for a number of
31 reasons, and because there is no other need at this point in time to consider revising
32 the PRC zoning parameters, we ask that the Council defer taking any action until such
33 time as appropriate sites are identified and pre-planning work can be performed. At that
34 time the Council should consider amendments to the PRC zone text. We believe that
35 06-18 as it would apply to the Webb Tract requires the County to choose between the
36 continued viability of its only commercially useful airport on one hand, and a residential
37 development for about 3,000 people on the other. Here is why. Number one: safety and
38 utility. The proposed development would permit buildings up to 135 feet tall to be placed
39 directly in the approach and departure paths of the airport's only runway, both vertically
40 and horizontally. The only way to land at the airport in inclement weather is directly over
41 the Webb Tract. The existence of the Washington D.C. flight-restricted zone precludes
42 the establishment of instrument or all-weather approaches from the other end. We have
43 submitted a crude drawing that graphically presents the problem the airport would face,
44 which I ask that you view and consider. Please know that 100% of all flights using
45 Montgomery County Airport pass over the Webb Tract, either on departure or approach.

35

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1 It's unimaginable that anyone would wish to place residences so near to where
2 airplanes are flying overhead, and inconceivable that the high-rise residences might be
3 built in this pathway. It doesn't often happen, but on occasion aircraft do lose power
4 immediately after take off. When they do there is little choice but to land straight ahead.
5 That is how pilots are trained, that choice puts the airplane in the Webb Tract.
6 Development there will expose pilots and persons on the grounds to substantially
7 greater risk than exists today. The reason land surrounding airports all over the country
8 is generally limited to industrial and park uses is to reduce the number of people
9 exposed to the safety risk, as well as to noise. The net affect is that high-rise
10 development on the Webb Tract would destroy the commercial utility of the County's
11 airport. Number two: Noise. Today there exists an uneasy truce between the airport's
12 nearby residents and airport users...

13
14 [BEEPING]

15
16 Meredith Saini,
17 Noise is one of the main concerns, thank you.

18
19 Council President Leventhal,
20 Okay. All right, questions. Mr. Silverman?

21
22 Councilmember Silverman,
23 Thank you, Mr. President. Really more a comment than a question. We are not here to
24 approve the Webb Tract proposal, even assuming there is one. We're going to review a
25 change to the zoning which, yes, could permit senior housing to be at the Webb Tract,
26 but there is a long, lengthy, cumbersome process which involves an extensive amount
27 of public input and ultimately a vote before the County Council on a rezoning, which is
28 what would happen if this zoning text passes and if there is any agreement among
29 parties to go ahead and move forward with something. I say that because I think the
30 impression has been created that because IDI and Miller and Smith had an agreement -
31 - which apparently they do not have as of today -- that somehow what the Council does
32 is going to fast-track or green-light that. In fact this Zoning Text Amendment won't do
33 that. It opens the door, but it opens the door about this much. And I just think that's
34 important for everybody, both proponents and opponents to know that there is a lot of --
35 a lot of hurdles to go through and a lot of community involvement and issues, Jack, that
36 you've raised about height of buildings and where they are in the flight path are exactly
37 all the kind of things that even assuming that something moved forward, that would all
38 get addressed in the course of a full-blown hearing with a Hearing Examiner and then
39 back to the County Council for an ultimate vote. So I just want to make sure folks leave
40 the room knowing that any votes by the County Council on this Zoning Text Amendment
41 do not in any way, shape, or form guarantee that this will move forward. As my chief
42 aide always likes to say, this is one those things that is necessary but insufficient, and
43 that's all I'll say at this point, thank you.

44
45 Council President Leventhal,

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1 Ms. Praisner.

2
3 Councilmember Praisner,

4 Well, I appreciate somewhat similar comments that I was going to make to what Mr.
5 Silverman made, except that it's also obvious why folks are here speaking one way or
6 the other, because if you look at the packet for the public hearing the cover packet says
7 in its last sentence the amendment has special provisions for property within 3,000 feet
8 of an airport. You can't help but want to comment from an airport perspective if that's
9 the focal point of the three-sentence cover memo on the Zoning Text Amendment. So
10 obviously we're going to hear a lot and I think it's important for folks to know the steps
11 that are associated with it. As I understand the Planning Board, the Planning Board has
12 some concerns about that and might want to look at expanding the PRC, but not
13 necessarily relating it especially to areas near an airport. Norman, my -- actually my
14 question is for you, friend. I would like you to -- because I'm interested in, as I age these
15 kinds of options. We had one before and one option in front of us as we looked, or not
16 really in front of us, but one option discussed as we looked at the upper Rock Creek
17 Master Plan, and there were significant environmental issues associated with that
18 parcel as we talked through what was being bantered about as potential uses and
19 where that parcel was. Obviously, I'm happy to hear that Loudoun County is developing
20 a lot, or you are in Loudoun. Loudoun is at a certain point in time that we are not from a
21 standpoint of development and having significant acreage. And so there are more
22 opportunities to get back and forth to Dulles from there and other things. But what I'd be
23 curious, given your expertise, is if you would just give me, give Jeff, before we have the
24 committee meeting or as soon as you can, a list of the differences in characteristics
25 from your perspective of the process for PRC, recognizing Virginia is a different land --
26 land use state and land regulated state from a standpoint of land decisions, but also the
27 parameters that you think should be incorporated within a zone that would allowed
28 PRCs to be built. I'm glad you made reference to Riderwood, because -- I can't
29 remember the history of that -- but it certainly was discussed during the Master Plan,
30 and that would be -- and since we don't have any Master Plan in front of us at this point,
31 it may be something that we need to continue to look at when we look at Master Plans.
32 So, any thoughts you have from a structural perspective about a PRC zone. I would be
33 most interested in. Thanks.

34
35 Council President Leventhal,

36 Ms. Saini, can you imagine any circumstances in which the Montgomery County Airport
37 Association would support development on the Webb Tract?

38
39 Meredith Saini,

40 I think we're [INAUDIBLE].

41
42 Council President Leventhal,

43 Press your button.

44
45 Meredith Saini,

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1 Sorry. I think more data needs to be gathered regarding everything, specifically as Mr.
2 Fitzgerald had also stated about the approach paths and coming in. I think -- and I don't
3 have a specific answer for you on that right now. But I think more information would
4 need to be provided. The bottom line is that any development anywhere on the Webb
5 Tract does pose risk to pilots and to people on the ground because as just if you don't
6 mind me commenting on something you said, which I think was appropriate, is that, you
7 know, if someone were to come in a little low, you know, it could be a potential risk to
8 folks on the ground. So, we're not in favor of development that would pose that kind of
9 risk to people on the ground or to pilots.

10
11 Council President Leventhal,
12 Okay, I would like some -- I won't be a member of the committee that will evaluate this
13 ZTA, but before it comes back to the full Council, I'd like get some information from the
14 Revenue Authority, some historical information, about why the acreage that was
15 purchased when the Airpark was constructed was the amount it was, and what was
16 anticipated at the time in terms of what might -- and some historical research as to what
17 was contemplated for ground nearby. Because for an airport and airport users to
18 preclude the use of private property located next door to it when the airport obviously
19 was constructed with certain expectations as to how much land it controlled seems to
20 put us, the County in a very difficult situation.

21
22 Councilmember Praisner,
23 I think Jack wants to say something.

24
25 Council President Leventhal,
26 Jack.

27
28 Jack Fitzgerald,
29 Thank you, I think the industrial uses are compatible with airports which is what most of
30 the ground around the airport is. In your industrial zones you have 35- and 40-foot
31 height limits. In addition to that, not anybody's living there so there won't be people
32 complaining about the noise from the airport. Industrial uses are quite compatible with
33 airports. We're not going to kill anybody, probably if we have an engine failure. And it's
34 just much better use. The price they're talking about, by the way, they do find
35 developing as an industrial use and there is a terrible shortage. I go trying to find a
36 place to put a body shop. It's almost impossible in Montgomery County to build a body
37 shop today, to find a place to put one, for example. There is a huge list of uses that
38 people need and the owners of those small businesses, those little cottage industries
39 that perform so many important functions to you are just at a loss to find a place to do
40 business. So I'm not trying to -- I'm not a land use expert, but I fly in a lot of airports and
41 I don't see very many high-rise buildings around airports, now, on either side of the
42 runway perhaps, but not at either end of the runway. But industrial uses are fine. That's
43 what the ground was zoned for. And while you're at it you could make that runway a few
44 hundred feet longer...

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[LAUGHTER]

Jack Fitzgerald,

Is that self-serving? It would be -- you know, we're in the jet age now. When that airport was built in 1963, jets were a novelty, you know, they have a 10,000-foot runway. The FAA has caused a whole new generation of jets that are about to come on the market. You'll be able to take one to Philadelphia, for example, a little small twin engine airplane that's a jet engine. It's safer, it's more efficient, it's quicker, it's better, it's a great improvement. But they take a little longer runway sometimes. On a hot day like today for example, they take a longer runway. And we have just about the right length. Frederick has the right length. We're a little behind Frederick. The only thing I think in the world that we're behind anybody on in this County. I love this County. You all do a wonderful job in this County. I always tell you whenever I get to see you how proud I am of you and your predecessors, and the good work that's been done in this County. I love living in this County, this is a wonderful County, it truly is. And it's because of the time and effort that people like you put into it, which is a great sacrifice that you make. I'm glad I had the opportunity to say that to you.

Council President Leventhal,

Thank you. Ms. Floreen. You wanted to comment, Ms. Saini?

Meredith Saini,

Pardon me I'm a little nervous, I don't do any public speaking.

Council President Leventhal,

You're doing fine.

Meredith Saini,

But I just wanted to say something to answer your question more directly from a pilot's perspective and flight instructor. The bottom line is take off is probably the most unnerving aspect of any flight for a pilot. You're constantly thinking where can I put this down if anything should go wrong. The chances of that, given today's technology, are very slim but you always have to be thinking of what is the best thing I can do? I know there is houses over there. There is a very small -- the Webb Tract the open space right now is pretty much my only option, because there is power lines. If I go straight ahead there is more houses, if I go to the left there is a soccer field or baseball field that there is usually kids on. I'd rather put it down on the power lines and kill myself than put it down on top of a soccer field and smack into some kids or into somebody's house. So pilots are very, very safety conscious. We're on -- every single time I push the throttle this is what we're thinking about. And the notion of having people living in houses right underneath the only place that I can really put the airplane down right now is a scary thought for most pilots.

Council President Leventhal,



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1 Nancy, hold off for a minute, I have another question. Greg, when did the Airpark
2 commence operations?

3
4 Greg Russ,
5 I'm sorry, I don't have that information with me.

6
7 Council President Leventhal,
8 Sometime in the 1960s? Ms. Praisner knows the answer.

9
10 Multiple Speakers,
11 [INAUDIBLE]

12
13 Council President Leventhal,
14 So many decades ago. Do we know whether a plane ever has had to come down on the
15 adjacent parcel?

16
17 Meredith Saini,
18 Yes.

19
20 Unidentified Speaker,
21 I witnessed one of our flight school planes go down [INAUDIBLE].

22
23 Council President Leventhal,
24 Okay, can we get statistics on that from the Revenue Authority as well? What has been
25 the track record of planes having to take an emergency landing on that parcel
26 throughout the airport's history. Okay, so we'll get some statistics on that from the
27 Revenue Authority. Ms. Floreen.

28
29 Councilmember Floreen,
30 Thank you. I really had a point along those lines, Mr. President. I don't think we have
31 anybody from the Revenue Authority who is speaking, right? Can we make sure that
32 they're here. We're taking this up on Monday?

33
34 Unidentified Speaker,
35 It is your choice.

36
37 Councilmember Floreen,
38 But at this point can we make sure that we have someone from the Revenue Authority
39 at the work session to answer any and all questions that might be generated by this
40 session. You of course can let them know in advance what we know so far. This is
41 indeed not a rezoning, but certainly the question of the appropriate language is quite
42 relevant. That's why the language is in there about the shopping center and the highway
43 and so forth, because it was addressed to the Olney situation years ago. So I'm sure,
44 there is always history. Let's make sure history is correct. Thanks.

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Council President Leventhal,
Mr. Spaulding.

Bob Spaulding,
There is a small portion of the Webb Tract in the southwest corner that's under the flight path and is in what's called the Runway Protection Zone, or the RPZ. When the industrial subdivision was approved by the Park and Planning it was required to be reserved for acquisition by the Airpark or the Montgomery County Revenue Authority. The RPZ is the area where statistically you are most likely to have an accident if do have an accident. So when the Revenue Authority is putting together information it would be helpful to know if any of those accidents were outside that RPZ. There are other limitations that are described in the 2002 Airpark study with building and obstruction heights that our analysis indicates we would be able to stay out of if we were to apply for an application here.

Council President Leventhal,
Okay. That's it for this panel. Let me just say thank you to this panel. The next panel includes Frank Anderson, Terry O'Grady, Roy Bevington, Jerry Donegan, David Cline. I've been very liberal about allowing additional speakers who signed up. However, we've now heard testimony from a pilot who is known to many of us and from the Airpark Association. And so what I want to urge all witnesses, whether they represent the community of East Montgomery Village or whether they represent users of the Airpark, or if they are part of any other sort of identifiable community here is there is no need to be repetitive. We're listening, we're aware of the issues. We do have other business before the Council this afternoon, and so, if you believe your point has been adequately made by a prior speaker there is really no need to make it again. And if you simply want to reiterate say, "I agree with the points made by the previous witness." That would be adequate. We are paying attention. We understand that both communities -- we've heard from residents of East Montgomery Village, we've heard from users of the Airpark. We're aware there is a great deal of interest on both sides. We know there is a lot of people here today, so your presence has registered. There is no need to have repetitive or redundant testimony. So, I would just out of courtesy to the Council, ask that he we try not to be repetitive or redundant in our testimony. And the first witness in the second panel is Frank Anderson.

Frank Anderson,
Mr. President, members of the Council, thank you for giving me the opportunity to speak on this issue. I'm going to abbreviate since you got a copy of my remarks. The elephant in the room on this, however much we want to say that we're not going to open the door to the development to the Webb Tract; it is the case that the sponsors and the supporters of this amendment intend that it to enable residential development on the Webb Tract. The County is the owner of the airport. It is public property. The County, I am both pleased and very proud of this, has a fine record of meeting its responsibility to operate that Airpark in a way that safeguards the safety and welfare of people on the ground and of aviators. Mr. President you raised the history. The history on is very

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1 clear. This County is soundly planned and effectively acted since this Airpark was taken
2 over in 1960 to protect the safety and welfare of the people on the ground and of air
3 travelers. The staff did an excellent analysis and the Planning Board provided excellent
4 recommendations. I had a list of quotations; I'll just go back to the 1971 Master Plan on
5 specifically the Webb Tract. "Because of the noise and hazard factors associated with
6 such a location no residential uses should be authorized." And every intervening
7 decision by the Planning Board, by zoning, when people have attempted to obtain
8 sewer permits that would allow residential development of this tract, it's been denied.
9 That's a sound policy. And I'm not opposed to 135-foot, I am definitely -- but the
10 principal is sound, it's been there since the beginning. Residential development this
11 close to the end of a runway is incompatible with the operation of the airport. I recognize
12 that there are those who understand that approval of such development would shortly
13 lead to the end of operations at the airport. Among those people are the supporters of
14 this Zoning Text Amendment. That's a far-reaching issue, which the County certainly
15 may want to address, but it's an issue that deserves far more careful study and open
16 debate than to slip it in under the backdoor under the guise of a Zoning Text
17 Amendment. I urge the Board to persevere in sound planning policies. I'm proud of them
18 and I'm pleased with them that have been related to that Airpark and have served us so
19 well for so long. I also, because as you might note I'm not young, I'm interested in
20 facilities for seniors. But if you apply this, please include language that specifically
21 prevents residential development on the Webb Tract.

22
23 Council President Leventhal,
24 Thank you. Terry O'Grady.

25
26 Terry O'Grady,
27 My name is Terry O'Grady and I'm President of East Village Homes Corporation and
28 also a member of MCCA. I actually thought as Mr. ...

29
30 [BEEPING]

31
32 Council President Leventhal,
33 No, start again.

34
35 [LAUGHTER]

36
37 Councilmember Denis,
38 That's a fast three minutes!

39
40 Councilmember Silverman,
41 Thank you for being brief.

42
43 Terry O'Grady,
44 That's why I left that big packet that you have there because I knew I couldn't say it in
45 three minutes. She's got a packet there, okay? Do I start over again, I'm good? Okay, all

42

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1 right As Mr. Dreyfuss had said the purpose of us being here today was to have the
2 amending the 40-year-old PRC. That's what I thought this whole hearing was about until
3 I saw the Planning Board report. We are here actually to support the 40-year-old PRC
4 with the modifications of removing the I-4 from the industrial, from the PRC. It's not
5 necessary, and changing some of the language and also the setbacks in this package.
6 In some of the concerns the Planning Board made reference to as it's a long --
7 concerning its long-standing policy within Montgomery County. Well, policies change
8 every day, and in the residential high-rises surrounding an airport is not new. And I
9 believe the airport -- developers build around airports and they know how to
10 accommodate the high-rises and the residential. I think if you think where you landed
11 lately. I land in Detroit City Airport quite a bit, and I go in high-rises and residential to go
12 into Detroit City Airport. This is not a unique situation. I think that this does exist
13 throughout our Country. Attached in there, I'm going to go briefly is minutes from the
14 Revenue Meeting with the Revenue Delta and so forth. It's in that package and
15 reference to the airport and in reference to the guidelines and that anything was to be
16 built there it was to be approved by FAA rules and regulations. That is in your packet.
17 There is a detailed meeting, there are four or five pages about the history of the airport
18 and about how you could put this residential into that area. And their only concerns was
19 the fact that outside of the no fly zone or the safety zone anything beyond that they had
20 no concern about what was built there. You can have gasoline tanks, you can have
21 anything you wanted there. Now anything beyond that safety zone. History of the
22 Airpark, for them to say that they want to put industrial in there, if you take -- I wanted to
23 come and talk about the PRC but I got off track, if you put industrial in there you'll have
24 three to four to 5,000 people working there from 9:00 to 5:00 every day. If you put in a
25 residential unit... oops.

26
27 [BEEPING]

28
29 Council President Leventhal,
30 Thank you very much. Mr. Bevington.

31
32 Roy Bevington,
33 Yes, thank you, my name is Roy Bevington. I'm here on behalf the Mid-County Citizens
34 Alliance to indicate our strong support for the proposed changes to the Planned
35 Residential Community Zone. The Mid-County Citizens Alliance represent homeowners
36 in Montgomery Village, Hunters Woods, Flower Hill, as well as other residents in the
37 Mid-County areas, and totally collectively these communities represent somewhere in
38 the area of excess of 8,000 households. The existing PRC zone makes it problematic to
39 construct a planned active adult housing community and we support the changes to the
40 PRC zone that were submitted in the Text Amendment. There is currently a major
41 deficiency in active senior housing in Montgomery County, and the County Council has
42 previously stated the need for additional housing to serve this increasing segment of the
43 population. Tied in with the development of the new housing community would be the
44 requirement that certain portions be developed for affordable workforce housing. We
45 have a currently have a situation in the County where teachers, police officers,

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1 firefighters cannot afford to live here due to the cost of housing. Approval of the Text
2 Amendment would allow additional housing to be built for those people's needs, so that
3 they can live within County. The adoption of the Text Amendment will allow the County
4 Council to review specific site plans on specific properties. A decision can then be made
5 as to the applicability of the site plan on the specific land parcel. Having said that, and
6 Mr. Silverman, I understand your concern and your comments. I feel it's necessary to
7 briefly make a comment on the PRC zone as it relates to the Webb Tract, since that
8 was a main focus of the Park and Planning staff report, and the discussions during the
9 Planning Board's review. Locating senior housing adjacent to the Airpark will in no way
10 jeopardize the continuing operation of the Airpark or result in unsafe flight operations.
11 There are safety zones established at the end of the runway, and those zones will be
12 honored in any development. The FAA will review and approve specific site plans to
13 insure safety zone compliance, and their recommendations must be followed. High-rise
14 buildings will not be built in the flight path. Any governing body must consider specific
15 site plans when reviewing applications for development. This includes building type and
16 location as well as land topography. In the case of the PRC zone review this was not
17 done. There were no site plans presented and discussion didn't consider analysis of a
18 specific situation, but rather people's assumptions. Safety of Airpark operations is a
19 concern no matter the type of development. Indeed an industrial development will have
20 more individuals located near the Airpark than would a residential development. Is their
21 safety any less of a concern than those of people who live there? Again, we encourage
22 you to approve the PRC zone as it's amended and we thank you very much for your
23 time and consideration.

24
25 Council President Leventhal,
26 Thank you very much. Mr. Donegan.

27
28 Gerald Donegan,
29 Good afternoon. My name is Gerald Donegan; I'm President of East Gate Homes
30 Operation, Montgomery Village. I'll abbreviate my comments here to the interest of time.
31 And that is we approve the amendments to the Zoning Text Amendment, and we ask
32 that you delete reference to the temporary helistop and the hospital, and also delete
33 references to the industrial development from the planned retirement community. We
34 believe this will have two benefits. One is it will protect the interests of seniors make
35 when they invest in property in a planned retirement community, and will also protect
36 the long-term interests of residents who live near a PRC, because then they will never
37 have to face unwanted industrial development in their community. Thank you.

38
39 Council President Leventhal,
40 Thank you very much. There are no questions for this panel. I'm sorry, we have still Mr.
41 Cline to go.

42
43 David Cline,
44 I'll be brief, thank you. I'm David Cline, a resident of East Village next to the Webb Tract
45 on Snouffer School Road, I speak for thousands of residents in our community. It

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1 appears that one outstanding solution has risen to the surface over the conflicts over
2 the controversial Webb Tract and that's the Zoning Text Amendment. And it has a
3 potential to give us a win/win situation. First of all if you take an informal poll of just this
4 room you can see that America is graying, so is Montgomery County. But this Text
5 Amendment opens up potential planned retirement communities, not just on the Webb
6 Tract, but in several areas. The Council has taken the lead on the workforce
7 amendment. I thought that was an excellent thing, since I'm a teacher. That helps fellow
8 teachers, firefighters, nurses, and other community service workers. It also is important
9 that active retirees don't have to look beyond this state or County to think about retiring.
10 That's another win/win. A comment that I'll just address briefly about the people who
11 might be opposed to this first of all, I love flying. I don't have an airplane myself. I have a
12 friend that has a plane out of the Airpark and has flown several times and I enjoy that. I
13 definitely do not want this to become a situation where the community is fighting with
14 the Airpark or the pilots, that would be a mistake for all of us, because we would all lose
15 in that battle. I don't want the uneasy peace to be ruptured. I really think if we work
16 together there are solutions. It's my hope we can reason together, because really we're
17 in the same lifeboat, and if we row together we can make some progress. Thank you.

18
19 Council President Leventhal,
20 Very good, there are no questions for this panel. We appreciate your testimony. The
21 next group includes Robert Anderson, Matthew Hurson, David Bralove, Boni Caldeira,
22 Steven Bushby, and Wayne Goldstein. Robert Anderson is first, is he here? Yes, and
23 again, I do want to ask if the points you were planning to make have already been
24 adequately made, you may feel free to associate yourself with earlier comments, and
25 not make repetitive comments. Mr. Anderson.

26
27 Frank Anderson,
28 Thank you my name is Robert Anderson and I also live in East Montgomery Village.
29 And I will abbreviate as well since you do have a copy or will have a copy of my
30 presentation with you. This proposal for an adult community can only be viewed as a
31 win/win for everything. The win comes in the form of increased property taxes and
32 income taxes that comes in the form of an adult community for the County by joining in
33 the front line providing comfortable and inviting living conditions for our senior citizens.
34 It's a win for fulfilling our community responsibility, providing affordable housing for
35 citizens over 55, and it's a win for all our residential communities by having a reliable
36 developer develop this property. Over the past 15 years or so residents of the
37 community surrounding this property have been put through a form of purgatory. Every
38 time we managed to get one unsatisfactory development plan corrected someone
39 somewhere came up with a new one. First it was zoned residential, then light industrial,
40 then came the dump trucks, and the seven year, but temporary, according to the owner
41 at the time, landfill plan. The uncontrolled pollution that came with it while in violation of
42 the state environmental law on asbestos dumping. Then along came the cement
43 crushers that would wake us up at 7:00 every morning and were in violation of the
44 County codes on cement crushers. Then along came the promises by a new owner that
45 all is well, they will work with the community on light industrial complexes, the right use

45

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1 for the property after all. Then, of course, came the Shady Grove Plan, which really
2 buried us. In reference to the concerns in Montgomery County Airpark personnel and
3 pilots, please don't accept as fact all you're being told. I really heard some misleading
4 comments being made here today. I would point out to you that of the 12 letters
5 received by the MCP Chairman from the pilots who refer to them as users of the
6 Airpark, not one of them live close to the community surrounding the Airpark. Except for
7 one case appear to be there for organizational purposes only. As an ex-pilot I believe
8 their safety concerns can satisfactorily be resolved as part of the local Map Amendment
9 process recommended by the MCP staff in the section titled "Citizens' concerns," dated
10 July 13th, 2006. You our County Council and the Park and Planning Commission have
11 the power to end this land use tragedy.

12
13 [BEEPING]

14
15 Frank Anderson,
16 I only have a sentence to go, may I?

17
18 Council President Leventhal,
19 One sentence, thank you.

20
21 Frank Anderson,
22 Thank you. In a manner that benefits everyone we ask that you join us in support of our
23 effort and vote "Yes," allowing the process to go forward for the ultimate approval of the
24 PRC zoning amendment. And I thank you for the extra time.

25
26 Council President Leventhal,
27 Thank you for your testimony. Mr. Hurson.

28
29 Matthew Hurson,
30 Good afternoon members of the Council, I'm Matt Hurson, I'm here as a private pilot.
31 And I'm going to limit my comments to why this ZTA should be denied, irrespective of
32 the implications for the Webb Tract. We all agree that additional housing is required for
33 retirees, in fact if an increase in price is any gauge we need housing for everybody. We
34 agree that the current PRC zone is too restrictive; however, to amend the PRC zone the
35 best method of doing so is to bring in a wide group of citizens in the public who aren't
36 motivated by a single issue. The people in this room are motivated like me, a pilot that
37 wants to protect the Airpark, and the honorable citizens who want to protect their way of
38 life, as well. We should have a process where we solicit the input of a wide variety of
39 industry professionals. We could have input from nonprofits, sponsors of retiree
40 housing, which I don't believe that their input was sought. I don't believe that we sought
41 the input of architects and planners that specialize in smart growth models. I don't
42 believe that planners and engineers who are proficient in sustainable design were
43 consulted in the least for the creation of this ZTA. None of the most helpful
44 stakeholders, public or industry, have been involved in the preparation of this proposed
45 amendment. The sole changes to the PRC that have been requested have been done

46

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1 at the request of a single owner for a single piece of property. I refer you to line 14 for
2 the access requirement. There was a debate about should it be a highway, should it be
3 a road? The entire debate is framed about what's appropriate for Snouffer School Road,
4 not how it applies to the County as a whole. The setbacks which are proposed to be 125
5 feet for a 75-foot tall building work pretty well for a 135-acre property, but I don't think
6 they'd work for a 25-acre property, they'd still be too restrictive. More important than
7 what's in the proposed amendment is what's missing, the principal sustainability, smart
8 growth, and new urban pedestrian access. When this PRC zone was created decades
9 ago, the state of the art was large lots and dependence on automobile transportation.
10 Why can't retiree housing be transit-oriented? Why can't every element of the purpose
11 clause be met in a single building on a 60,000 foot lot near a Metro? Lines 19 and 20
12 prohibit it. "They shall be so designed to have minimum impact upon surrounding land
13 uses and to provide adequate open space adjacent to their boundaries." This is a real
14 missed opportunity to create a ZTA that we would all be very proud of. Thank you.

15
16 Council President Leventhal,
17 Thank you. Mr. Bralove.

18
19 David Bralove,

20 Thank you, my name is David Bralove, I am a pilot and user of the Airpark, as is my wife
21 and my son. I first want to endorse the comments made by others in opposition to the
22 Zoning Text Amendment, specifically those of Frank Anderson. In deference to the
23 Council's time here in allowing me to speak I will not repeat what has been said before.
24 However, I think that I do want to make the comment that regarding this issue that we
25 are just opening the door a little bit. My response to that is it's a door that should never
26 be opened. I think this process here runs the risk of doing something indirectly that
27 should not be done directly. We are beginning a path of incursion that will only become
28 problematic. I understand that there will be, if this does go down the road, there are all
29 kinds of reviews and hearings and the like that will occur. One of those is with the FAA,
30 specifically under 14CFR, Part 77, which talks about objects affecting a navigable air
31 space. I've given a copy of those regulations to the Council, as well as copies of the
32 regulations under COMAR regarding obstruction standards that the state of Maryland,
33 at least, has decided should be in place with respect to airports that are owned by the
34 state, specifically BWI, Thurgood Marshall, and Martin State. Those regulations mirror
35 the FAA's. So there is a great deal of concern about what we build around our airports.
36 We're not alone, this County is not alone in that. I would refer you to what our neighbor
37 has done in Virginia. If you go to their website, I've given you copies of this, they have a
38 guide to compatible airport land use planning for Virginia communities. I think what's
39 happening in Virginia is something that we should take a look at. In that guide they say
40 that to protect our airports from undesirable land uses local governments, developers,
41 and airport operators need to cooperate and communicate. What we've done here is the
42 beginning of the cooperation and communication and we don't need to short-circuit that.
43 In that guide they also say commercial, industrial, and agricultural uses, to name a few,
44 tend to be more compatible and less sensitive to airport activity than residential uses.

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1 So I would implore the Council not to open that door, and to keep it shut firmly. Thank
2 you.

3
4 Council President Leventhal,
5 Thank you. Mr. Caldeira.

6
7 Boni Caldeira,

8 My name is Boni Caldeira, I'm an airline transport pilot and certified flight instructor, I've
9 been at Gaithersburg for 10 years now. In the interest of time I won't go through my
10 whole presentation except to draw your attention to the last three pages, which just
11 make the point that this airport has become more and more an airport for business
12 travelers. The flights in yellow -- if you look at your handout -- the flights in yellow are
13 business flights, the others are possibly personal flights. I can't really tell for sure, but
14 I'm sure that the ones highlighted in yellow are business flights, given that they are
15 citation jets, et cetera. This is not a little Piper Cub grass strip type airport. The County
16 really owes it to all its citizens to protect this airport and the economic value that those
17 business travelers coming into the airport bring to the County, similar to Mr. Fitzgerald's
18 comments. Okay, I'll just go off topic a little bit. I hear you saying this ZTA really is not
19 about the Webb Tract, it's not related to the Webb Tract, but that's hard for me to
20 stomach given that it says within 3,000 feet of an active airport. When you're talking
21 about Montgomery County there is only one airport that that could be. Well, there's
22 actually two, but there's only one viable one. To say it's not about the Webb Tract to me
23 seems, I find that difficult. If you truly mean to make PRC zones in this County, what
24 you should do is you should reverse it, you should say we have specifically exclude any
25 PRC within 3,000 foot of an airport. To me that would be the common sense approach
26 rather than including it within 3,000 feet of the airport. As to having incompatible use,
27 residential near airports. In Newport News -- I'd like you to take a look, there is a case in
28 Newport News where a builder built near the airport -- he did all the soundproofing of
29 the doors and windows and the walls. And just fast-forwarding four years, the residents
30 of those buildings have successfully sued the airport for lowering their market value of
31 their homes. The airport was there well before the development. That never stops
32 anything. It's just incompatible use. You can slice it and dice it any way you want.
33 Residential near airports, if only because of the noise, is incompatible, let alone the
34 safety issues. Light industrial use would be an appropriate use. I'd rather see light
35 industrial use with some tolerances for the fact that something untoward could happen
36 after take off, maybe a lane that's wide enough for an airplane to land on in an
37 emergency landing. The fact that noise becomes almost a non-issue in an industrial
38 setting if nothing else should convince you to go that route. One of the earlier speakers
39 said policies change over time, you know. So the fact that it was industrial and now
40 should be residential, policies change. But the basic physics, and the basic chance
41 events that happen really don't change. I mean safety...

42
43 [BEEPING]

44
45 Boni Caldeira,



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1 Okay, thank you for your time.

2
3 Council President Leventhal,
4 Okay, thank you very much. Mr. Bushby.

5
6 Steven Bushby,
7 Thank you for this opportunity to speak. My name is Steve Bushby. I'm a resident of Mill
8 Creek Town, which I'll point out happens to be closer to the Airpark than any part of
9 Montgomery Village and I'm also a pilot and user of the facility. I do endorse previous
10 testimony that's been made about issues with incompatibility. I'm sorry, is that on now?

11
12 Council President Leventhal,
13 Yes it is on now.

14
15 Steven Bushby,
16 I'd like to call the Council's attention to the specific language about the purpose of this
17 particular zone. It lists a number of amenities to be provided to the residents of the
18 community and those are to be provided in accordance with comprehensive plans
19 developed by the Planning Board. And I quote, "So designed to achieve a maximum of
20 coordination between the development and the surrounding uses, including a maximum
21 of safety," unquote. I think the testimony makes it clear that the particular proposed
22 changes that are before the Council are inconsistent with the stated plan of the zone. I
23 think that's a fundamental flaw that needs to be addressed. I think there has been plenty
24 said already about issues related to safety. I'd just like to add one comment, and that is
25 that it's not an abstract statistical issue when you're a user of the facility or when you
26 live nearby. It's your life that's potentially in danger and that makes a big difference. I
27 would also like to point out that I am not opposed to making changes to the zoning
28 requirements for retirement communities. In fact, I don't know of anyone who really is.
29 There is a need for that kind of facility in Montgomery County. I think what we really
30 ought to have is a look at what the County needs, and changes to the zoning ought to
31 be made on the basis of the interests and needs of the County as a whole, and not on
32 the basis of a particular piece of property and a particular owner who has a financial
33 interest. Testimony earlier today indicated that the County once before made a zoning
34 requirement based on a particular development that was planned, and that no longer
35 suits the needs for the County. It was a mistake to do it then, it's a mistake to do it now.
36 We need a comprehensive plan that works for the entire system of the County and it
37 needs to respect the adjoining uses and safety issues that go with it. Thank you.

38
39 Council President Leventhal,
40 Thank you. Mr. Goldstein.

41
42 Wayne Goldstein,
43 I'm Wayne Goldstein of the Montgomery County Civic Federation Planning and Land
44 Use Committee. What happens when the burgeoning cottage industry of designer ZTAs
45 also embraces community concerns? This unique ZTA happens; the result of good

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1 intentions run rampant. The County Council ignoring the desires of nearby residents
2 while intently seeking to transform industrial Shady Grove into a dense walkable transit-
3 oriented town created the need for the Webb Tract as a suitable replacement site. Then
4 listening to the desires of those other nearby residents in Montgomery Village the
5 Council limited the uses and with this ZTA are asked to eliminate them. Making the
6 implementation of the Shady Grove Sector Plan much more difficult, something that
7 also pleases those once distraught Shady Grove residents. Plans kept changing until
8 the use of the Webb Tract went from low-rise light industrial to high-rise residential just
9 two months ago. Councilmember Knapp leads the ZTA effort, wanting to bring senior
10 housing to the Upcounty. Councilmember Floreen can talk about the position of the
11 residents on affordable housing in the Airpark in the late 90s. They express concerns
12 about noise and the impacts on the area. The senior housing project allowed by this
13 ZTA would be built in the flight path of the Montgomery County Airport. The Council
14 might expect to hit a brick wall known as the FAA. The FAA does not tolerate
15 obstructions, whether large or small, in the flight paths of airports. It forced the Airpark
16 Zone of the Montgomery County Revenue Authority to change management and
17 policies in 2002, including one day likely requiring part of a building that intrudes into the
18 airport's flight path to be demolished. In 1997 \$2 million was spent to build a new
19 runway, which included \$1.5 million from the FAA. Right now the Airpark is in the midst
20 of making acquisitions, getting easements, and removing obstructions, "To air
21 navigation to protect life and property on the ground." This massive \$40 million project is
22 being 95% funded by the FAA. If the FAA could not or did not want to try to stop the
23 construction of a 135-foot building in the flight path of this airport it might do what the
24 Department of Agriculture did in 1965, when the Diggs Council up-zoned the Upper
25 Rock Creek as the Lake Needwood Flood Control Dam was being constructed. Back
26 then it threatened not to pay for the dam if the Master Plan were not down-zoned. The
27 FAA might possibly expect to stop funding the airport improvements and perhaps
28 demand the return of payments, since this ZTA would bring about the end of
29 commercial aviation at this airport, threatening the livelihood of hundreds of small
30 aviation-related businesses, including pilots. This ZTA would threaten part of the
31 revenue of the Revenue Authority. This ZTA should either be withdrawn by the sponsor
32 or the language allowing senior high-rise buildings next to this airport should be
33 expunged.

34
35 [BEEPING]

36
37 Wayne Goldstein,

38 There is plenty of opportunity to also research other suitable sites and do this in a more
39 reasoned way. Thank you.

40
41 Council President Leventhal,

42 Thank you. There are no questions for this panel. The last group on this ZTA includes
43 Bob Hawkins, Alan Barnett, and David Yacono. Is Mr. Hawkins here? Please come up.
44 Please proceed, Mr. Hawkins. No, I'm not sure it's on, press it down, the light doesn't
45 come on on that one.

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1 Bob Hawkins,

2 All right, good afternoon I'm Bob Hawkins and I'm a life-long County resident. I've been
3 flying out of the Airpark on business for almost 50 years. Over 50 years ago, the County
4 government through the County Council committed to the aviation community, the
5 business community, and the residents of the County that if we would relocate from
6 Congressional Airport -- which is now a shopping plaza -- to Gaithersburg the County
7 government would protect the citizens of the County, the business community, and the
8 aviation community from encroachment by developers. This was a two-way agreement.
9 The airport was to remain regional and not adversely affect the surrounding area, and
10 the community would not adversely affect the airport. The aviation community has kept
11 its part of the bargain, but the Council has ignored its obligations to the citizens of the
12 County as well as a commitment to the business community and the aviation interests
13 here in the County. The County government has issued building permits for the
14 construction of buildings that penetrate the protected air space surrounding the airport
15 proper, as well as its approaches. Its built schools within the traffic pattern areas and
16 allowed the construction of housing developments directly under the approach paths to
17 the airport. I retired about four years ago, and about two years ago I was approached by
18 an aviation company that had been convinced to locate in the County by the County
19 Economic Development Group. I agreed to come out of retirement and work with this
20 new company. At the time I was the fourth employee hired. There are now over 20
21 highly-paid engineers and scientists working for this company and except for one
22 individual all are now residents of Montgomery County, many having purchased new
23 homes in our community. We have made substantial capital investments in our facilities
24 here in the County. Given our current growth rate we should exceed 50 staff members
25 by the end of the decade. If the County allows the development of this tract as any kind
26 of residential facility it will adversely affect the airport. So much so that I am sure our
27 operation will find it necessary to relocate, not just to a nearby airport such as Frederick
28 or Hagerstown, but out of state; taking our staff, facilities, and tax dollars with us. Finally
29 the developers are only interested in making as much money as possible as quickly as
30 possible and then moving on. They are not interested in the longer term effects of their
31 projects, nor how they affect the community. They don't care about the mess they leave
32 behind. It is the obligation of this Council...

34
35 [BEEPING]

36
37 Bob Hawkins,

38 ...to keep the commitments it made by its predecessors and protect and provide for the
39 citizens of the County.

40
41 Council President Leventhal,

42 You need to wrap up please, sir.

43
44 Bob Hawkins,

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1 The aviation community contributes to the overall economy of the County, we bring
2 business to the County, we are part of the community,, we are not just passing through
3 like the developers.

4
5 Council President Leventhal,
6 Okay, thank you very much. Mr. Barnett.

7
8 Alan Barnett,
9 My name is Alan Barnett. I'm a resident of the County and I'm a private pilot, I fly out of
10 Gaithersburg. The general language of the proposed amendment to the Montgomery
11 zoning ordinance serves only to mask the amendment's true purpose, to permit
12 developers Miller and Smith to build a planned retirement community, including one or
13 more high-rise apartment buildings on the Webb Tract. The language fools no one. The
14 airport has been the focus of today's hearing. While a spokesman for the developer
15 argued that the impact of the development on the airport will be minimal, and some
16 residents of nearby Montgomery Village have added their support for the project, airport
17 supporters have spelled out in detail the negative impact of the proposed high-rises.
18 Beneath the claims and counter claims we are in essence arguing the merits of erecting
19 tall buildings under the traffic pattern near the final approach course to the third-busiest
20 airport in the state. The folly of this idea is astounding. It's inevitable consequences
21 obvious. Residents of the new PRC will complain about the airport noise. Residents of
22 Montgomery Village will curse the increased congestion on their surface roads. Pilots
23 will worry about the obstructions. The FAA will raise the approach minimums, and the
24 business aircraft who now go to Gaithersburg will divert to Frederick and take their
25 dollars with them. After years of frustration, tension, and possibly protracted litigation
26 the airport will close. No wonder Chairman Berlage of the Planning Board characterized
27 the proposed development at the hearing last Thursday as quote "lunacy," end quote.
28 The proposed development of the Webb Tract is very bad policy, it's bad for the airport,
29 it's bad for the neighborhood, and it's bad for the County. I strongly urge you to accept
30 the Planning Board's recommendation and modify the proposed amendment by
31 removing the specific clauses that would permit the construction of the PRC on the
32 Webb Tract. Thank you for your attention.

33
34 Council President Leventhal,
35 Thank you. Mr. Yacono.

36
37 David Yacono,
38 My name is David Yacono, I represent the TSS Flying Club as its President. We've
39 operated in Montgomery County for almost 50 years, serving the aviation needs of
40 hundreds of Montgomery County residents. I'll abbreviate my comments here related to
41 the issue of commercial viability of the Montgomery County Airpark. The notion of
42 residential high-rises a mere fraction of a mile from the airport is the antithesis of
43 compatible land use, it will render the Montgomery County Airpark commercially
44 unviable. For an airport to be commercially viable its users must be able to rely on the
45 usability of that airport virtually every day, whether it be sunny or cloudy. What enables

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1 pilots to operate in and out of on cloudy days are detailed FAA developed navigation
2 procedures known as Instrument Approach Procedures. These procedures are
3 necessarily designed with safety margins that account for inherent inaccuracies in
4 instrumentation and procedure execution. The Montgomery County Airpark currently
5 has instrument approach procedures that enable use of the airport on all but the very
6 worst weather days. Currently clouds play a relatively minor role in the ability of aircraft
7 to operate at the Montgomery County Airpark. If just one high-rise is placed anywhere
8 on the Webb Tract the FAA will be forced to re-evaluate and redesign or possibly
9 eliminate the instrument approach procedures at the Airpark in order to preserve the
10 necessary safety margins. I want to emphasize the distinction between the runway
11 safety zones that you heard about earlier here. Were you to build in a runway safety
12 zone or in an area otherwise affected by the approach the FAA has no ability unless you
13 have grants that have been issued by them to tell you what to do. They're simply going
14 to change the parameters by which we could use the airport. That could mean a
15 displacement of the threshold, which would be equivalent to shortening the runway, or it
16 could mean a change in the instrument approach procedures, where we can't come
17 down as low, and thus the airport will be closed on many more days than it currently is.
18 So I'll just close by saying enabling the development of the Webb Tract under PRC
19 zoning will be signing the death warrant for Montgomery County's sole commercially
20 viable airport. It will drive out Montgomery County businesses that depend on the
21 airport, including the TSS Flying Club. A decision to support the proposed development
22 of the Webb Tract is a decision to put Montgomery out of the airport business just when
23 other forward-thinking jurisdictions like Frederick and Stafford are investing heavily in
24 their airport infrastructure. Thank you.

25
26 Council President Leventhal,
27 Okay, thank you very much, there are no questions. There is a question, Ms. Floreen.

28
29 Councilmember Floreen,
30 This is actually for Mr. Zyontz. Jeff, I'm particularly interested in the Revenue Authority's
31 comment with respect to testimony we just heard about the instrument approaches and
32 the technical issues that affect how people would be required to use the airport and
33 what that would mean for the users. I don't doubt what you've told us, sir.

34
35 Jeff Zyontz,
36 I'll have information for when you have your work session.

37
38 Councilmember Floreen,
39 Thank you.

40
41 Council President Leventhal,
42 Okay, that's it for this panel, that's it for this item, thank you very much. Agenda Item 14
43 is a public hearing on Zoning Text Amendment... Oh yeah, let's do that first. We are
44 going to take up a new resolution having to do with the date of the public hearing on
45 Zoning Text Amendment 06-22: Office Real Estate, C1 and C2 Zones. We are just

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1 simply changing the date we had earlier scheduled. The new resolution would have the
2 date on September 26th, 2006, at 1:30 p.m. Ms. Praisner.

3
4 Councilmember Praisner,
5 I'll move adoption of the resolution that changes the date to the 26th.

6
7 Council President Leventhal,
8 Ms. Praisner has moved and Mr. Silverman has seconded a change in the public
9 hearing date to September 26th. Those in favor will signify by raising their hands. It is
10 unanimous among those present. Good afternoon. This is a public hearing on Zoning
11 Text Amendment 06-19: Florist - Office Moderate Density Zone, which would allow a
12 florist business in the OM zone under certain circumstances, and generally amend
13 provisions related to the OM zone. The PHED Committee is scheduled to take this up...
14 Here we go, you found my script, there we go.

15
16 [LAUGHTER]

17
18 Council President Leventhal,
19 The PHED Committee is tentatively scheduled to take this up on July 24th, 2006 at 9:30
20 a.m. We have one witness, it is Mr. Greg Russ. Welcome.

21
22 Greg Russ,
23 Thank you, Mr. President. Again, Greg Russ from the Montgomery County Planning
24 Board. The Planning Board reviewed Zoning Ordinance Text Amendment Number 06-
25 19 at its regular meeting on July 13th,, 2006. The Board recommends that the proposed
26 Text Amendment be approved as submitted and included in the attached staff report.
27 The proposed Zoning Text Amendment would allow a florist business in the OM zone as
28 an accessory use to the main use of an office building and limits it in size to no more
29 than 1,000 square feet. It is intended that the OM zone be located in areas where high
30 intensity uses are not appropriate, but where moderate intensity office buildings will not
31 have an adverse impact on adjoining neighborhoods. The Board believes that a limited
32 application of a florist land use would not constitute a high intensity use in an office
33 building. Size limitation is used in this case to ensure that the moderate intensity of the
34 OM zone is adhered to, thereby minimizing any adverse impact on adjoining
35 neighborhoods. Thank you.

36
37 Council President Leventhal,
38 Okay, thank you very much. There are no questions. Agenda Item 15 is a public hearing
39 on Zoning Text Amendment 06-20, Mixed-Use Town Center, Transfer of Development
40 Rights Zone, MXTC/TDR Zone, which would create the MXTC/TDR zone and generally
41 amend the Mixed-Use Town Center Zone. Anyone who wants to submit additional
42 material for the Council to consider should do so before the close of business on August
43 1st. The PHED Committee is tentatively scheduled to take this up on September 18th.
44 Please call (240) 777-7900 to confirm the date and time. We have a surprise witness on
45 this item. It is Mr. Greg Russ.

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Greg Russ,

Again, Greg Russ from the Planning Board. The Planning Board reviewed this Text Amendment at its meeting on July 13th, 2006, in fulfillment of the recommendations of the approved and adopted Damascus Master Plan. The Board supports the Zoning Text Amendment as submitted and included in the staff report. The Text Amendment supports the Damascus Master Plan recommendations for the creation of a Transferable Development Rights option for the Mixed-Use Town Center Zone. Specifically for the reasons noted in the attached staff report the Planning Board recommends uses allowed in this zone would also be the uses allowed in MXTC zone, the base zone there. The requirements for both standard method of development and optional method of developments are established. Without Transfer of Development Rights the standard method of development is proposed at a maximum floor area of .35 for nonresidential development, and a maximum of eight dwelling units per acre. Optional method of development would permit a maximum FAR of 1.0 for nonresidential and a maximum of 20 dwelling units per acre. These numbers may be increased for MPDUs. For the optional method of development, any increase in residential density above the maximum of eight dwelling units per acre must include Transfer Development Rights to achieve the additional density. All other development standards are the same as those for the MXTC zone. Thank you.

Council President Leventhal,

Okay, thank you, there are no questions. We are now on Agenda Item 16. Good afternoon, ladies and gentlemen, this is a public hearing on a resolution to approve a franchise agreement for the use of public right-of-way, AboveNet Communications Inc. The Management and Fiscal Policy Committee is scheduled to take this up on July 24th at 2:00 p.m. Anyone who wants to submit additional information for the Council to consider should do so by the close of business July 19th. There are no witnesses on Agenda Item 16. Agenda Item 17 is a public hearing on a resolution to approve a license agreement of the use of public right-of-way, United RST, LLC, to construct a below-grade parking facility in a portion of the right-of-way of 13th Street between Eastern and Georgia Avenues. The Management and Fiscal Policy Committee is tentatively scheduled to take this up on July 24 at 2:00 p.m. Anyone who wants to submit additional information for the Council to consider should do so by the close of business, July 19th. We have one witness, it is Ms. Pat Harris, representing United RST.

Pat Harris,

Good afternoon, Pat Harris of Holland and Knight. I just wanted to make a few brief comments on behalf of RST. Unfortunately Scott Copeland, the representative of RST, had a conflict and wasn't able to be here. The applicant has worked very closely with Montgomery County DPWT, both in connection with the General Development Agreement which allows for public parking in South Silver Spring, and the license agreement which would...

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[BEEPING]

Pat Harris,
That's okay. ...and the license agreement...

[BEEPING]

Councilmember Praisner,
Keep going, Pat.

Pat Harris,
...which would allow for the use of the public use space. The license agreement facilitates a private public development process by allowing 195 public parking spaces and also 321 residential units above. The majority of the area which would be subject to the license agreement is currently owned by the applicant, but by virtue of complying with the Master Plan they would need to dedicate that area. Therefore, the parking would project into the to be dedicated public use area. Without the license agreement either the County does not get the number of public parking spaces they needed or the County and applicant are unable to come to a mutually agreeable terms of the agreement. The license agreement benefits both the public by providing for needed public parking spaces, the County, and also the applicant, and we urge your approval. Thank you.

Council President Leventhal,
Okay, thank you Pat, there are no questions. Agenda Item 18 is a public hearing on Bill 30-06: Personnel Retirement Investments, which would amend the Employees Retirement System, and the Retirement Savings Plan to comply with the Uniform Management and Public Employee Retirement Systems Act, and generally amend County law governing retirement and investments. The Management and Fiscal Policy Committee is scheduled to take this up on July 24th at 2:00 p.m. Anyone who wants to submit additional information for the Council to consider should do so by the close of business July 19th. We have one witness, but he seems to have brought people with him, it is Mr. Tim Firestine.

Timothy Firestine,
Reinforcements. Good afternoon, I'm Tim Firestine, I'm the Director of Finance and I'm also the Chair of the Board of Investment Trustees, and I have with me today Linda Herman, who is the Executive Director of the Board of Investment Trustees, and Amy Moskowitz from the County Attorney's office. We're here to ask for your support of Bill 30-06: Retirement Investments. This proposed bill brings the Employee's Retirement System and the Retirement Savings Plan into compliance with Maryland's recently enacted Uniform Management of Public Employee Retirement Systems Act, which is referred to as UMPERSA. UMPERSA modernizes, clarifies, and makes uniform the rules governing the investment and management of assets of public retirement system.

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Maryland's action is related to recent work by the National Conference of Commissioners of Uniform State Law. More than \$1 trillion in assets are managed in the United States in retirement systems for public employees of state and local government. Right now a mixture of state law governs the systems and unlike private retirement systems, which are governed primarily by federal law, called the Employees Retirement Income Security Act, or ERISA. State laws have not kept up with modern investment practices so that trustees for these systems are frequently not able to maximize return for the level of risk that is appropriate for these systems. The Uniform Law Commissioners promulgated UMPERSA to remedy the deficiency. The act provides legal rules that permit public employee retirement systems to invest in their funds in the most productive and secure manner. Maryland, Virginia, and Wyoming are the first states to adopt the act. In addition, within Maryland, Baltimore and Howard Counties, and within Virginia, Fairfax Counties have adopted laws implementing UMPERSA standards. In broad terms UMPERSA protects participants and beneficiaries of public retirement systems in two ways. First: the act articulates the fiduciary obligations of trustees and others with discretionary authority over various aspects of a retirement system and ensures that trustees have sufficient authority to fulfill their obligations. Second: the act facilitates effective monitoring of retirement systems by requiring regular and significant disclosure of financial and actuarial status of the system, both to participants and beneficiaries directly, and to the public. UMPERSA eliminates all categorical restrictions on the types of investments that pension trustees may make because these restrictions limit the ability of trustees to perform their fiduciary duties when investing retirement plan funds. In order to comply with UMPERSA, the proposed amendments in Bill 30-06 remove the restrictions on the types of investments the Board may direct an Investment Manager to make and modify the definition of an Investment Manager. The proposed amendments will not change how the Board selects, evaluates, or monitors the investment managers overseeing the retirement plan assets. The Board's investment program is already structured around policies, procedures, and a due diligence process that is prudent. We look forward to working with the Council in its deliberations on this legislation. Thank you very much.

Councilmember Praisner,

Thank you. There are no questions. Thank you very much. We will move now to Agenda Item Number 19. This is a public hearing on Special Appropriation to the Maryland National Capital Park and Planning Commission FY '07 Capital Budget, and amendment to the FY '07-'12 Capital Improvements Program, \$4,145,000 for acquisition local parks, \$640,000 for Greenbriar local park, \$750,000 for ball field initiatives, \$1 million for Planned Life Cycle Asset Replacement, Non-local Parks \$2,398,000 for Black Hill Trail renovation and extension. A Planning Housing and Economic Development Committee work session is tentatively scheduled for July 24th, 2006 at 9:30 a.m. Persons wishing to submit additional information to the Council's consideration should do so by the close of business July 19th. There are no speakers for this hearing. Want to go on?

Council President Leventhal,



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1 I will, thank you. Was there a comment on this?

2
3 Councilmember Praisner,
4 No.

5
6 Council President Leventhal,
7 If you're here as a witness we'll take your testimony if you'd like to deliver it now.

8
9 Councilmember Praisner,
10 Mr. Carter.

11
12 Charles Carter,
13 My name is Charles I. Carter of Brookeville, Maryland. I'm Chair of the Montgomery
14 County Parks and Recreation Advocacy and Vice President of Montgomery County
15 Tennis Association. On behalf of MCPRA, we support the requests that are being made
16 by Park and Planning on the program open space. My testimony today is on behalf of
17 the 5,000 members of the Montgomery County Tennis Association regarding the PLAR
18 non-local parks. We're pleased with the improvements that are being made in the tennis
19 infrastructure countywide. By my tally over \$3 million has been approved by Park and
20 Planning. We're asking today for your support to replace the lighting fixtures at Olney
21 Manor Tennis Courts. As noted in the Parks recommendation the current lights are
22 energy inefficient and more than 30 years old, well past their useful lifespan. The light
23 poles are rusted, one fell down on the basketball courts last year and the poles are a
24 huge eyesore in the park. More importantly the candle power produced by the existing
25 lighting is below standard, both from a playability and safety perspective. As such the
26 current conditions actually pose a liability risk, one that can be eliminated by the
27 proposed replacement. Tennis is enjoying a resurgence in this County and the courts at
28 Olney Manor Park are being used to a much greater extent. All courts have been filled
29 at various times in the last few weekends. New lights will allow even more usage when
30 it's cooler for us older folks in the evening, and as the days grow shorter at the end of
31 the summer. Thank you.

32
33 Council President Leventhal,
34 Thank you very much. That concludes Agenda Item Number 19. Agenda Item 20 is a
35 public hearing on amendments to the Maryland National Capital Park and Planning
36 Commission's FY '07-2012 Capital Improvements Program for the Elmhurst Parkway
37 Neighborhood Park and the Takoma/Piney Branch local Park. The Planning Housing
38 and Economic Development Committee is tentatively scheduled to take up this matter
39 on July 24th at 9:30 in the morning. Anyone who wants to submit additional information
40 for the Council to consider should do so by the close of business July 19th. There are
41 no witnesses on Agenda Item 20. Agenda Item 21 is a public hearing on a Special
42 Appropriation to the County Government's FY '07 Capital Budget for Acquisitions, Non-
43 Local Parks in the amount of \$4 million, and an Amendment to the Maryland National
44 Capital Park and Planning Commission's FY '07 through 2012 Capital Improvement
45 Program for Acquisition Non-Local Parks. The Planning, Housing, and Economic

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Development Committee is tentatively scheduled to take this up on July 24th at 9:30 A.M. Anyone who wants to submit additional information for the Council to consider should do so by the close of business July 19th. There are no witnesses on Agenda Item 21. Number 22 is a public hearing on Expedited Bill 31-06: Maryland Emergency Management Assistant Compact adoption, which would authorize Montgomery County, Maryland, to participate in the Maryland Emergency Management Assistance compact. The Council is scheduled to act on this expedited bill at the conclusion of this hearing and there are no witnesses signed up. We know that Director Aoyagi of our Department of Homeland Security is here to speak to the bill when the Council is ready to take it up at the conclusion of the hearing. Ms. Praisner.

Councilmember Praisner,
I just want to comment that I thought the meeting that was held last week that Mr. Knapp and I attended from a state level bringing together folks to talk about emergency management was a good step. And I'm sorry that Mr. Aoyagi got called away, but I was pleased with the turn out, including representatives from the town of Gaithersburg. I thought that was very good. I don't see any other speakers. So, that hearing is closed and I think the only item we have left is action on that legislation. Gordon you want to join us? I think staff is recommending that the bill be approved with an amendment that would make the bill applicable retroactive to any requests for assistance that the County made or may make in conjunction or connection with the Needwood Dam Emergency that began on June 27th, 2006. I assume, Mr. Aoyagi, that you concur in that recommendation, that would modify the effective date I guess?

Kathleen Boucher,
Yes...

Councilmember Praisner,
Your mic is not on, Kathleen.

Kathleen Boucher,
I'm sorry, if you wanted to see the exact language of the amendment it's on Circle 13 lines six through ten.

Councilmember Praisner,
Okay, then I would entertain a motion since this doesn't go to any committee. Mr. Knapp, you moved, Mr. Andrews seconds, with the amendment, I assume. So the legislation has been moved as amended and the clerk would call the role.

Council Clerk,
Mr. Denis?

Councilmember Denis,
Yes.



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1 Council Clerk,
2 Ms. Floreen?

3
4 Councilmember Floreen,
5 Yes.

6
7 Council Clerk,
8 Mr. Silverman?

9
10 Councilmember Silverman,
11 Yes.

12
13 Council Clerk,
14 Mr. Knapp?

15
16 Councilmember Knapp,
17 Yes.

18
19 Council Clerk,
20 Mr. Andrews?

21
22 Councilmember Andrews,
23 Yes.

24
25 Council Clerk,
26 Ms. Praisner?

27
28 Councilmember Praisner,
29 Yes.

30
31 Council Clerk,
32 Mr. Leventhal?

33
34 Council President Leventhal,
35 Yes, the bill passes. How many of us are there? Two, four, seven to zero. Okay, and
36 Council is adjourned. Thank you very much.

37